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HAZARDOUS ASBESTOS ABATEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON TOXIC SUBSTANCES
AND ENVIRONMENTAL OVERSIGHT

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2083 AND S. 2300

BILLS PROVIDING FOR THE ABATEMENT OF HAZARDOUS ASBESTOS

MAY 15, 1986

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HAZARDOUS ASBESTOS ABATEMENT

THURSDAY, MAY 15, 1986

U.S. Senate,
Committee on Environment and Public Works,
Subcommittee on Toxic Substances and
Environmental Oversight,
Washington, DC.

The subcommittee met, pursuant to adjournment, at 9:45 a.m., in Room SD-406, Dirksen Senate Office Building, Hon. David F. Durenberger (chairman of the subcommittee) presiding.

Present: Senators Durenberger, Baucus, and Burdick.

OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator Durenberger. The hearing will come to order.

The purpose of our hearing this morning is to take testimony on two bills, S. 2083, a bill to a bill to abate abestos hazards in school buildings and S. 2300, a bill to provide for similar measures of protection in Federal and other buildings.

Due to circumstances beyond our control, we have been required to severely curtail our plan for this morning, as you can tell by reviewing the witness list. We had originally intended an extensive discussion of this legislation, but late last evening, the conferees of the Superfund decided to hold a working session on clean up standards beginning at 10 a.m.

The chairman and ranking member of this subcommittee are conferees on that bill and feel an obligation to participate in the discussion on that most important issue.

Since we have several witnesses who made the trip to Washington from other places in the country, we decided not to cancel the hearing altogether, but we will be keeping the proceedings as short as we can.

That portion of the hearing which does not occur today may be rescheduled for a later time.

I should begin this morning by castigating the administration for its callousness on the whole subject of asbestos. My colleagues on the House side have no trouble in consistently creating headlines doing that at asbestos hearings, whether it's secret meetings with the Canadian Government or OMB interference in EPA decisionmaking or the simple decision not to fund the asbestos in the schools program at all in 1987. It seems that the administration has a pretty clear record on the subject of asbestos.

The author or authors of those policy decisions are not here with us today. No official from the Office of Management and Budget is prepared to acknowledge the role that agency plays in setting administration policies on the question of asbestos.

OMB is not the policy shop in Washington. We have a little one up here at this end of Pennsylvania Avenue called the Congress and I sense that somehow the Congress is about ready to make policy on asbestos and to make it stick.

The chief author of the bills before us today happens to be the chairman of this committee, Bob Stafford. Senator Stafford has expressed his belief that these bills can be enacted this year, so that is going to be our goal.

It will be our purpose this morning and perhaps at another session at a later date to gather technical advice from our witnesses so the program we do enact is workable and enforceable by citizens in court, if not by the President of the United States.

I would like, at this point in the record, to insert the statements of Senators Baucus, Burdick, and Abdnor.

[The statements referred to follow:]

Statement by Senator Max Baucus
Subcommittee on Toxic Substances
and Environmental Oversight
May 14, 1986

Mr. Chairman, I want to thank you for scheduling this important oversight hearing on S. 2083, the Asbestos in Schools Bill and S. 2300, the Asbestos in Federal Buildings Bill. I also want to thank the witnesses who have agreed to testify before the committee this morning.

Asbestos is a known cause of cancer and serious lung disease. Unfortunately, prior to 1970, asbestos was used extensively in thousands of buildings across the United States.

It is well documented that when released into the air, asbestos fibers can cause lung cancer, asbestosis, pleural mesothelioma, and other debilitating lung diseases.

Scientists have not demonstrated a threshold level below which exposure to asbestos can be considered safe. Many scientists believe there is no safe level of exposure to asbestos. The increase in the number of cancers linked to long-term asbestos exposure is the result of inadequate control of asbestos in previous decades. Enactment of this legislation will insure that additional avoidable deaths do not occur.

Children are particularly vulnerable to developing these diseases due to greater sensitivity, higher respiration rates, and a longer remaining lifetime during which the diseases may develop.

Our children are our nation's most valuable asset.

Those who oppose these bills have expressed concern that the cost would be too great. I too am concerned about the cost. But I refuse to accept the argument that the United States cannot afford to provide its most valuable asset, school children, with a safe environment for learning.

In addition, these bills would save money by putting a stop to the unnecessary asbestos removal projects that have taken place. These projects have cost millions of dollars and created life threatening conditions for millions of school children, federal employees and building occupants.

In addition the cost to society of litigation from asbestos-related disease cases is immense and likely to grow. Arguably, avoiding future litigation by appropriate abatement today "saves" society by preventing or discontinuing public exposure to hazards that may result in disease in 15 to 40 years' time.

EPA's failure to promulgate specific regulations has led to mass confusion. School officials and building managers need proper guidance to make the correct decisions to protect school children, building occupants, and the general public.

Dr. John Moore, EPA's assistant Administrator of Pesticides and Toxic Substances, who will be testifying before us today, testified in the House Subcommittee on HUD and Independent Agencies that in some cases the quality of asbestos abatement work being conducted created a problem bigger than the one school officials were trying to solve.

Up to now, the EPA has required schools to inspect for asbestos and publicize the results. However, EPA has not required schools to remove or cover the asbestos. EPA has also been very reluctant to provide schools with financial assistance to get the clean-up job done.

As a result, we still have a lot of schools with asbestos and we have the health of a lot of children at risk.

In my state of Montana, out of a total of 779 schools, only 228 schools have been inspected. The EPA office in Helena, Montana has planned inspections for approximately 35 schools in 1987. At 35 schools per year it would take the EPA until 2001 to complete inspections of Montana schools.

These bills will turn EPA from a passive to an active player in the effort to solve the Nations' asbestos problem.

I normally do not favor legislation calling for regulations of this kind. But the time has come for the EPA to recognize its responsibility to the American people.

These bills will force the EPA to do what it should have done on its own years ago.

STATEMENT BY QUENTIN N. BURDICK
ASBESTOS HEARING MAY 15, 1986
10:00 AM, SD-406

GOOD MORNING. TODAY, THE COMMITTEE WILL EXAMINE THE PROBLEMS OF ASBESTOS CONTAMINATION OF SCHOOLS AND FEDERAL BUILDINGS AND THE PROPOSED LEGISLATIVE RESPONSES TO THESE SERIOUS PROBLEMS - THE ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986 AND THE FEDERAL BUILDING ASBESTOS HAZARD ABATEMENT ACT OF 1986.

ACCORDING TO THE ESTIMATES I HAVE SEEN, APPROXIMATELY 31,000 SCHOOLS AND 733,000 PUBLIC BUILDINGS CONTAIN ASBESTOS THAT COULD BE HAZARDOUS TO PUBLIC HEALTH. IN THE SCHOOLS ALONE SOME 15 MILLION CHILDREN AND 1.4 MILLION EMPLOYEES ARE POTENTIALLY AT RISK FROM INHALING THE LETHAL FIBERS FROM DAMAGED ASBESTOS.

ASBESTOS IS A KNOWN HUMAN CARCINOGEN. WHEN CERTAIN TYPES OF AIRBORNE ASBESTOS FIBERS ARE INHALED, VARIOUS KINDS OF CANCER AND OTHER CHRONIC ILLNESSES, INCLUDING A LUNG DISEASE CALLED ASBESTOSIS, CAN DEVELOP. FOR THESE REASONS, IT IS ESSENTIAL THAT CONGRESS DO ALL IN ITS POWER TO PROTECT THE NATION'S SCHOOL CHILDREN AND GOVERNMENT EMPLOYEES FROM THE DANGEROUS EXPOSURE OF ASBESTOS.

AS YOU ARE ALL WELL AWARE, CONGRESS HAS ALREADY TAKEN AN IMPORTANT STEP IN ENSURING THE SAFETY OF OUR NATION'S SCHOOL CHILDREN IN THE FORM OF THE ASBESTOS SCHOOL HAZARD ABATEMENT ACT OF 1984 (ASHAA), WHICH PROVIDES LOANS AND GRANTS TO SCHOOLS THAT OTHERWISE COULD NOT AFFORD TO SOLVE THEIR ASBESTOS PROBLEMS.

I WAS AN ORIGINAL COSPONSOR OF THAT BILL, AND WANT TO CONGRATULATE SENATOR ABDNOR, ITS SPONSOR, FOR HIS HARD WORK IN BRINGING IT INTO LAW.

However, it is clear that further legislative measures are needed in order to comply with congressional intent to end asbestos hazards.

Despite the fact that EPA has provided some technical assistance to schools and conducted school inspections, the task of abating our nation's schools asbestos hazards is far from over.

It appears that many school inspections were incomplete because of the uncertainty as to what should be called hazardous asbestos. Secondly, when asbestos was found not all were required to abate it. Finally, in some cases the schools attempt to abate the asbestos made the problem worse because of untrained abatement contractors.

I want to make it clear that I fully support the intent of Senator Stafford's bill. S. 2083 is a good approach, however I have certain reservations. Of minor concern are specific technical aspects of the bill that I think can be worked out with great ease. My major concerns involve the potential financial burden that the legislation would impose on local school districts and tight compliance. I would also like to see the fine for penalties that can be imposed on schools lowered from $25,000 to $5,000.

The Senate is fortunate to have Chairman Stafford on this committee, as well as, subcommittee chairman of education. We all are aware of the financial difficulties placed on school systems because of the decline in federal dollars. It is important to balance more evenly the need to abate asbestos against costs imposed on poor school districts.

May 15, 1986 -- Statement on S. 2083, the Asbestos Hazard
Emergency Response Act of 1986 -- Senator James Abdnor

Mr. Chairman, I am pleased we have the opportunity to hear today from a wide array of witnesses on S. 2083, the Asbestos Hazard Emergency Response Act of 1986, and S. 2300, the Federal Buildings Asbestos Hazard Abatement Act of 1986. Of particular interest to me, as the Chairman knows, is the problem of asbestos in schools. The distinguished Chairmen of both the full Committee and this Subcommittee, together with many of our Committee colleagues, joined with me in sponsoring the Asbestos School Hazard Abatement Act of 1984, referred to as ASHAA.

In developing ASHAA, under which the Environmental Protection Agency (EPA) provides grants and no-interest loans to financially needy school districts for necessary asbestos abatement activities, we worked closely with a number of interested parties. Primarily, we worked with six education advocacy organizations -- the National Education Association

(NEA), the National Parent Teachers Association (PTA), the American Federation of Teachers (AFT), the American Association of School Administrators (AASA), the National School Boards Association (NSBA), and the Council for American Private Education (CAPE). I wish to note, Mr. Chairman, that all these associations strongly supported ASHAA.

Thus, I am troubled by the fact that these groups do not all speak enthusiastically about S. 2083, the bill affecting schools upon which we focus our attention today. Several of these organizations have cited serious reservations about this proposal. At least one of those organizations is represented here today. At least one other is submitting written testimony.

Why are these organizations not all endorsing, without qualification, S. 2083? Certainly they all share an interest in doing what is best for the school children in this nation. Anyone who suggests this is not the case owes them an apology, Mr. Chairman. Serving as a member of a school board today, in light of the current liability insurance crisis, is no picnic.

Those who do serve on the local school boards around this nation do so out of a commitment to ensure the very best in educational opportunities for the children who attend the schools in their district. Many have children who are currently enrolled in those schools. Surely they want their children to attend school in a safe, healthy environment.

Mr. Chairman, some of these education organizations must concern themselves particularly with where the dollars are going to come from to carry out the requirements of this bill. School administrators and school board members must develop a budget that takes into consideration all the needs of their students and they don't have the luxury of deficit spending. If their needs are greater than their available revenues, they must go to the people of their district and ask for more money. This is not a simple matter, as you know, Mr. Chairman. If raising local and state taxes were an easy matter, I don't think that all the public education advocacy groups would be as strident as they are in opposition to the Administration's proposal to eliminate state and local tax deductibility. I think we can all agree that the majority of our nation's schools are not flush with funds.

Which leads me, Mr. Chairman, to one of my greatest concerns about this bill. In my own state, where the value of farm property has dropped, our schools are having a difficult time making ends meet. I think it inappropriate for the federal government to mandate reinspections, development of operations and maintenance (O & M) plans, and abatement -- all of which may prove quite costly -- without also providing a reasonable amount of financial assistance to carry out that mandate. I am interested in working with the sponsors of this bill to develop some alternative to having local school districts bear all the financial responsibility for reinspection and the establishment of O & M plans. I suggest that we might earmark some ASHAA funds for this purpose. And, as a member of the Senate Appropriations Subcommittee which exercises jurisdiction over the EPA budget, I will be pleased to take the initiative to do so.

Secondly, Mr. Chairman, I believe some of the deadlines in the bill are unreasonable. Here again, I would like to work with the sponsors of S. 2083 in developing more workable timelines for the schools and the states.

Further, while I do not propose to alter the enforcement mechanism in S. 2083, which proposes to enforce under TSCA (Toxic Substances Control Act), I do think it appropriate to limit to $5,000 per day -- as does the similar House proposal authored by Representative Florio -- the fine which may be levied against school districts for an asbestos violation. Also, I think we might encourage EPA to assess fines with some consideration of the size of the local educational agency (LEA) and the financial resources available to it in mind.

These, Mr. Chairman, are my major concerns. I believe some potential technical glitches may be ironed out with the assistance of the agency. I have found the Asbestos Action Program staff to be most helpful and responsive with such matters. (I ask that the agency's response to Representative

Lent's letter concerning the Florio bill be included in the Subcommittee record.)

In conclusion, I wish to emphasize that I wholeheartedly support the objectives of S. 2083 -- they are very similar to what we have already accomplished in school districts receiving ASHAA funds and in states which have received ASHAA grants for establishing contractor training and certification programs in accordance with the model developed by the agency. I applaud the distinguished Chairman of the full Committee, whose concern for the health, education and well-being of our children is unexcelled by any member of either the Senate or the House, for his continued efforts to rid our nation's schools of potential asbestos hazards. I am confident that we can work together to report from the Committee a bill that addresses my concerns, and hopefully the primary concerns of the majority of witnesses appearing before us today. I look forward to doing so this year, Mr. Chairman.

Senator **Durenberger**. For the record, I want to say that no part of my comments on the failure of administration policy in this area is directed at Dr. Moore who is our witness this morning.

So far as I can tell, he is one of the few, if not the only administration official who has a commendable record on the subject of asbestos. He's been with us before to discuss the Asbestos in Schools Program and I am sure we will profit from his advise this morning.

I hope that in the months ahead his efforts will profit from our support. So, Jack, let us begin with you. I am going to call up the next witnesses as a panel so as to expedite the time this morning. Jack, welcome.

STATEMENT OF JOHN A. MOORE, ASSISTANT ADMINISTRATOR, PESTICIDES AND TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY

Dr. **Moore**. With your permission, Mr. Chairman, I would like to have my whole statement inserted for the record and I will summarize its contents.

Senator **Durenberger**. Your statement will be made a part of the record.

Dr. **Moore**. Senator, EPA's goals, as it relates to asbestos in buildings was articulated several years ago. We have stated that our goal is to encourage people to inspect buildings to determine if asbestos is there, inform parents and other building occupants and employees that might occupy those buildings about the presence of that asbestos, have officials carefully maintain asbestos if it is in good condition, and take action to repair and remove it only when it is badly damaged.

Judging by the legislation we're discussing this morning, I would say that the goals of the people who are supporting this legislation and the agency's are basically the same. Our differences are mainly one of strategy and process.

However, those differences are significant enough for EPA to oppose both bills. Our opposition is based on the probability that Federal statutes could result in schools and other building owners losing the flexibility that is needed to make appropriate decisions based on local conditions and this could lead to unnecessary and potentially dangerous abatement activity. We believe that use of regulations and Federal statutory deadlines would cause EPA to suffer loss of momentum, momentum in actions that it is currently undertaking. Finally, various provisions in the bill could result in substantial unnecessary cost being incurred by the Federal, State, and local entities.

A number of EPA activities are underway and were alluded to in your opening remarks. There is the Asbestos School Hazard Abatement Act that [ASHA] we have been administering for the last 2 years. In administering the loan and grant program under ASHA, we have developed procedures to identify accurately hazardous or deteriorating asbestos. These procedures are germain to this hearing because they bear on some of the requirements and standards included in the legislation we are discussing. They're being used and some States have adopted them and some school districts are using them on their own to prioritize their abatement project.

We stress training over and over again. We have established three national training and information centers—one at Georgia Tech, one at Tufts University, one at the University of Kansas, and soon two more centers will be opened at the University of California at Berkeley and the University of Illinois in Chicago. These centers have been very successful, and they underscore our feeling that it is imperative to get information out to the local level as opposed to a Federal presence as the dominant force in these areas.

Another area that remains a priority, is the State certification programs. We think that it is important to have comprehensive State programs to train and certify contractors and to oversee their work. We developed and awarded 12 State seed grants last year toward that end. We're in the process of awarding an additional 18 grants this year, and we plan to award another 8 grants next year.

The response to the Maryland model certification plan which we have distributed to the States, coupled with awarding these grants, I think has been most gratifying.

A year ago only four States had active certification programs. Currently 20 States have passed legislation and an additional 10 States have legislation pending. I think that is pretty remarkable progress in a period of a little over a year.

In September, we are going to sponsor a national conference on asbestos legislation in collaboration with the National Conference of State Legislatures. This conference will allow States with existing programs to assist those States who have yet to develop a program. We're also going to discuss, at that meeting, the Connecticut School Inspection Program which, I think, may become a model or could serve as a model for other States.

Turning to section 202 of the Asbestos Hazard Emergency Response Act, we agree with the goals owners but we feel that the terms describing hazardous asbestos in section 202 could force school administrators to divert funds needed to abate serious problems into unnecessary and potentially dangerous abatement projects.

Furthermore, EPA believes that a Federal statute or regulation locking in a particular methodology will take away the flexibility needed by local officials to deal with asbestos.

The Agency clearly prefers guidance, favoring a national regulation only when it is the most effective and necessary approach.

Section 203 talks about certifying personnel who inspect buildings, develop and carry out asbestos abatement plans and analyze bulk and air monitoring samples.

We think these ideas are good, they have merit. We would submit that we are well on our way to realizing it.

Section 206 is quite problematic. It requires school districts to reinspect their buildings, develop asbestos management plans, submit the plans to the Governor or EPA for approval, make the plan publicly available, implement the plan, and affix warning labels as appropriate.

Again, while we think these goals are appropriate we are concerned about the process envisioned in this legislation. We have been, over the last few months, reviewing our progress to date and reassessing what modifications we may need in these areas. We do plan to issue, in the very near future, an advance notice of proposed rulemaking [ANPR] to solicit further comments on possible further future Federal activities such as reinspections of school buildings, development of management planning, periodic reinspection, periodic notification of parents and employees.

We may also seek comments on possible exemptions for schools that have already conducted adequate inspections, have developed such plans and maybe have already completed appropriate abatement.

I think, Senator, there has been general consensus on what factors need to be focused for further activity. What we hope to get out of the ANPR is to see if we can crystalize various approaches that people have been speculating might be the most appropriate and then develop some general consensus about an approach.

Underscoring, I think, the fact that there tends to be agreement on what needs to be done and we continue to have a diversity of opinion as to what is the best way to get to it.

A particularly difficult section of 206 is the State or EPA responsibility to review and approve or disapprove potentially 45,000 plans. Neither EPA nor the States have the resources or knowledge of local conditions to provide such meaningful review and evaluate these new plans, particularly when you consider the proposed period for such review to be done and completed is 90 days. That's totally inadequate. Appropriate and thorough evaluation of these specific abatement plans only possible at the local level.

Commenting on the second bill, S. 2300, we strongly support the concept that all Federal buildings should be inspected and that management plans be developed as appropriate. There is a lot that is ongoing. We've had a lot of interaction and, indeed, have reviewed plans developed by the General Services Administration the Postal Service, Veterans' Administration, all four branches of the Department of Defense. These agencies have made excellent progress in identifying the abating asbestos hazards in their buildings. They have developed, in a number of instances, their own training program. We are concerned that legislation, at this time, could be counter productive because it may require slightly different requirements which would invalidate the progress that these Federal agencies have made to date.

Finally, I would like to comment on the bill's requirements concerning non-Federal buildings. Schools, as you know, have been the sole focus of EPA's regulatory efforts to date, because children are a particularly vulnerable population.

The Federal programs in schools is also a model program for other building owners. All of the guidance that we have developed and all of the State efforts that have been established in recent months while forcused toward schools, are equally applicable to all other buildings as well.

I think there also needs to be a sense of reality put in here given the finite number of resources available today and the prospect of either level or declining resources over time. Use would much rather make our technical assistance program available to all building owners rather than attempt to regulate the three-quarters of a million public buildings that may contain asbestos.

I would be glad to answer any questions that you say have.

Senator **Durenberger**. In your testimony you mentioned that you will soon be issuing an advance notice of proposed rule making. Would you tell us what led you to that decision?

Dr. **Moore**. Well, as I mentioned briefly, we have been reassessing where we are, what accomplishments have been made, what still needs to be done or isn't working quite as well as needed. We feel, in internal EPA discussions to the agency, as well as to discussions with people inside and outside the Federal Government, State government, and the private sector, that there seems to be a general feeling as to what are the issues that need to be addressed.

What we would like to do is broaden the comment on those issues determine the best way to address them and maybe get some sense of priorities among these issues. One of the best ways to do this is to issue an ANPR.

Senator **Stevens**. It is. In that regard, have you got some ideas on what kind of risk benefit analysis you're going to have to proceed under, particularly under the of Tosca?

Dr. **Moore**. If we were to follow up the ANPR with a formal rule making dealing with asbestos in buildings, and because TOSCA is a risk benefit statute, we would have to come up with some measure of what benefits would be derived from whatever is being proposed. Because it is risk benefit analysis, there is a natural tendency within the agency, as well as on the part of everyone else, to have us try to do that in quantitative measures. I think trying to do it quantitatively involving issues such as we're talking about here, where a lot of the data that is available is very qualitative at best, could prove to be a problem.

Senator **Durenberger**. Quantitative is the problem?

Dr. **Moore**. Yes. I don't think there is a problem in doing a qualitative evaluation. I do think there will be a lot of people who will say you can't really move forward unless you have some quantitative basis to underpin your judgment. I think that could be problematic because of the nature of the issue.

Senator **Durenberger**. Could you elaborate a little on your technical assistance activities concerning public buildings?

Dr. **Moore**. As I mentioned, most of our technical assistance activities that have been directed toward schools, schools are just as relevant to public buildings.

The other thing that we are working on hoping to implement later this year or early next year, is to examine at some of the private sector activities that have been a success. Some of these are in corporations, possibly some in hospitals, some in shopping center type of areas. We would review those activities to determine if we can use them as a model, similar to what we did with the State of Maryland program for State certification and try to use that to stimulate and focus activities on the part of others.

Senator **Durenberger**. Can you somehow quantify the amount, the degree of technical assistance that is going to be provided to these people?

Dr. **Moore**. We have no plans to commit any specific amount of resources that is solely directed toward public buildings. As I've mentioned, many of our technical assistance activities for schools are equally applicable to other buildings—our contractor certification activities are a good example of EPA efforts which are useful to both schools and other buildings.

Senator **Durenberger**. The last question I asked you last summer, I'm going to ask you again. It deals with what, if anything, the Justice Department is doing with the authority that they have to sue manufacturers of asbestos products to recover the costs of abatement actions that have already been financed by Federal funds?

As I recall, when I asked you the question last summer, you didn't have an answer, so I'm going to ask you again. Do you have any idea whether the Attorney General of the United States has filed or is planning to file any actions to recover the costs of your abatement program from those who manufacture the product originally?

Dr. **Moore**. When you asked the question before, I pleaded total ignorance. I'll only plead semi-ignorance today. To my knowledge, there is no action under way, at this time, by the Department of Justice to recover costs.

What you're referring to there is something that's in the Asbestos School Hazard Abatement Act that allows the Federal Government to try to recover costs of the loan and grant money that has been awarded. I am not aware of any activities, to date, focusing on trying to do that.

I would like to point out that most of the money we're talking about here, even though we announced the ASHAA awards a year ago, a lot of it is yet to be released to school districts because many of them have not selected contractors or met all requirements to receive ASHAA funds they have been offered.

Senator **Durenberger**. How many dollars are we talking about?

Dr. **Moore**. Last years amount that we awarded was $45 million. This years awards, which we will announce in July will be another $46 million, so the total is $91 million.

Senator **Durenberger**. Is there some kind of diminimous rule around this place that we don't sue people to recover under "*x*" number of dollars that you're aware of?

Dr. **Moore**. Not that I am aware of.

Senator **Durenberger**. Do you have a surplus in the EPA budget?

Dr. **Moore**. Not that I have found.

Senator **Durenberger**. Was there any at EPA that was pressing the Attorney General?

Dr. **Moore**. I must confess that I don't think EPA has actually requested that the Department of Justice pursue this.

Senator **Durenberger**. Shall we have another hearing next year and raise this again, would that be helpful?

Dr. **Moore**. I will commit to formally pursuing this subject with the Department to see what could be worked out with them.

Senator **Durenberger**. Say that again.

Dr. **Moore**. I will commit to doing that and reporting to you in relatively short order.

Senator **Durenberger**. How about by the end of the day or end of the week? Can you get a statement from the Attorney General of the United States or his designee, that outlines it or do you think it will have to be second hand.

Dr. MOORE. I will try.

Senator DURENBERGER. Will you get me something by the end of the day?

Dr. MOORE. Yes, sir, I will let you know the progress that I have made or failure thereof.

Senator DURENBERGER. OK. Can you or would you tell us about the citizen suit provisions of TSCA and is it your reading of this legislation that citizens could sue under TSCA to compel the actions that Congress would require under these two bills that are before us here?

SUSAN VOGT. I haven't researched this, but I believe under the House version, citizens would not be allowed to sue because the House version invalidates section 20 at TSCA. Under the Senate version, you have left TSCA intact which would allow citizens suits under section 20.

Senator DURENBERGER. The two bills that we have before us, the one for schools and the one for other buildings do not have counterparts on the House side.

Do you see some difference between schools and other buildings that should discourage us from doing our second bill, the so-called public buildings bill. Are we on the right track or are we just duplicating something else?

Dr. MOORE. Senator, you know, presence of asbestos in a damaged condition can pose a hazard in buildings other than schools. From that standpoint, it makes sense to encourage people to inspect all buildings. Our focus, which has been essentially restricted to schools just represents first priority of buildings that need to be done. Given the resources that we have, we think it is appropriate to continue to make schools our first priority, realizing that, a number of EPA technical assistance activities have equal utility and application for other buildings as well.

Senator DURENBERGER. My last question deals with a popular subject today and that is our relations with our neighbors to the north. Since I am one of their neighbors and became one of the deciding votes in getting on with fair trade, I have a certain curiosity about how those relations are conducted and I am not really referring to Mike Deavers role and things like that. I think there is sort of a growing apprehension on my part. I looked at the telex that John Dingell released last week and I get a little bit alarmed about what in the world is going on behind the scenes. We seem to be coming up with proacid rain solutions on one hand and it looks like, behind the scenes, there is some effort to protect Canadian asbestos manufacturers. Can you sort of bring us up to date on what might be going on and what the Canadian stake is in the decisionmaking that is going on down here?

Dr. MOORE. Senator, to my knowledge, the dealings that I have had or EPA has had with the Canadians or any other foreign government, regarding asbestos have been open and above board. They also have been very clear during these discussions. They do not look with favor on our proposed ban and phase out of the use of asbestos in this country.

Senator DURENBERGER. And what is that?

Dr. MOORE. Well given that they and the Russians are the major producers and exporters of asbestos, it would be logical that——

Senator DURENBERGER. Do you have any idea what the dollar volume is to Canada?

Dr. MOORE. I forget it. It's several hundred million dollars. It's in that range. I will confirm that figure. I may be off on that. Most of the asbestos that is mined in Canada, for export, and which we import, comes out of the Province of Quebec so that Province is particularly upset. They are upset for two reasons. One is the loss of an export market to the United States, which is probably very meaningful from their perspective. The second concern that they have is because the United States is proposing to do something which might influence the actions of other nations. So it isn't just the loss of a possible U.S. market. It could be also the loss of other markets because of the U.S. ban and phase down.

They have been very blunt and I think, candid and open in their discussions with us.

Senator DURENBERGER. Would you describe how blunt and how open they are and who is blunt and open about that?

Dr. MOORE. I am aware of a couple of times that I have briefed members of the Canadian Parliament, and members of the Canadian bureaucracy on what our plans were as it relates to the proposed ban and phase down now.

It was a factual exchange. There was a frank exchange of views as to why they were concerned about it and we frankly explained to them that we thought we should be moving this way. There is a full understanding and I would characterize any comments that we have had of late with them as an information exchange.

That's all I am aware of that EPA has had with respect to discussions with the Canadians.

Senator DURENBERGER. Are these contacts coming from the national government or from the provincial government of Quebec?

Dr. MOORE. Primarily from the national government. We typically will be called, I believe, by the Canadian Embassy to arrange such a meeting.

Senator DURENBERGER. That is the Canadian Embassy in Washington?

Dr. MOORE. Yes.

Senator DURENBERGER. As a matter of record, at those meetings, are the Canadians looking for information or are they advocating certain courses of action?

Dr. MOORE. I think they were doing two things. One, they wanted to try and understand the basis of our decisionmaking process and second, they thought there was a different view that had equal validity and they expressed that view.

Senator DURENBERGER. What do you know about the Canadian public building utilization of this asbestos and what action do you know the Canadians are taking with regard to asbestos in buildings?

Dr. MOORE. One of the most highly quoted activities that has occurred recently, in Canada, as it relates to asbestos in buildings is the Ontario Royal Commission Report. That report basically assessed the hazards as they saw them and the risks that were posed by asbestos in buildings and what to do about it.

It's a very thorough, exhaustive report.

Senator DURENBERGER. Has that been dumped on in political circles in Canada?

Dr. MOORE. No; I think it is primarily accepted as a very reasoned report. It suggests that one needs to be slower in taking action, that the risk is not as great as we would characterize it.

On the other hand, once they feel that they have crossed the threshold as to when action should be taken, the action that they have proposed, in some respects is more sweeping than the action that maybe we have proposed.

Senator DURENBERGER. OK. Max.

Senator BAUCUS. So the conclusion of the Ontario Commission Report was what? That asbestos in public buildings was a problem?

Dr. MOORE. The Ontario Commission basically concluded that inhalation of asbestos does pose a risk. They also felt that asbestos may be in place in buildings, but in the main does not pose a great risk and therefore one should not over react to the circumstances. In those instances where you did have deteriorating asbestos one should move to correct the problem.

Senator BAUCUS. What proportion of U. S. imports of asbestos comes from Canada?

Dr. MOORE. Currently, U.S. imports—again, I will confirm that, but it's way up there, 80 percent, 85 percent.

Senator BAUCUS. 80 to 85 percent?

Dr. MOORE. Yes; 80 percent.

Senator BAUCUS. About 80 percent of U.S. consumption is Canadian?

Dr. MOORE. Yes; Senator Baucus, probably for the last 5, maybe up to 10 years, another major source of asbestos in the world was southern Africa, which provided a different form of asbestos. It is quite clear that a lot of people feel that those forms of asbestos pose even greater hazards than the chrysotile asbestos. Industry in this country has been reluctant over the last few years to use those forms of asbestos and as a result chrysotile has gained a larger market share and that happens to be a type of Canadian asbestos.

Senator BAUCUS. How strongly has Canada pressed the U.S. Government to continue the roughly 80-percent portion of Canadian asbestos to be exported from Canada to the United States? How strongly have they pressed us?

Dr. MOORE. I don't know how to characterize how strongly. They have made known to me that they think that the proposed ban and phase down is unwarranted. They think that there are technologies available today that will allow one to use asbestos with minimal amount of risk, that it can continue to be used. We tend to take exception to a lot of those uses, particularly when we think there are substitutes around that don't pose the same degree of risk.

Senator BAUCUS. What discussions are you aware of among American officials, as to how to react, or how to handle the Canadian points that supports the continuation of the export of asbestos at the same volume?

Dr. MOORE. I or anybody in EPA, as far as I am aware of, has never been instructed by anybody as to how to treat or not to treat any inquiries that we get from the Canadian Government.

Senator BAUCUS. I didn't ask if you were instructed. The question was, what discussions are you aware of?

Dr. MOORE. I've never had any discussions with people outside of EPA in the Federal Government where relationships with the Canadian Government were discussed.

Senator BAUCUS. Are you aware of any discussions whatsoever that occurred within the U.S. Federal Government that bear upon Canadian exports of asbestos to the United States and how that bears upon, say, the two bills before us right now?

Dr. MOORE. No; none whatsoever, as far as the two bills before you right now.

Senator Baucus. What about, back to how the United States should handle asbestos in public buildings, generally?

Dr. MOORE. Nothing.

Senator BAUCUS. You're not aware of anything?

Dr. MOORE. Most all of the dialog that we have had with the Canadians directly has been involved with the proposed ban and phase down of the use of asbestos in this country.

Senator BAUCUS. I'm not asking you that.

Dr. MOORE. Almost none dealing with asbestos use in public buildings.

Senator BAUCUS. I appreciate that. I'm not asking you what dialog you have had with the Canadian officials. I'm asking you what discussions have there been within the U.S. side, among U.S. Federal officials?

Dr. MOORE. We've had a fair amount of dialog as it relates to asbestos in buildings, as I mentioned, with GSA, the Veterans' Administration and the Department of Defense, as they have been developing their programs to look at their buildings and figure out what needs to be done. On the issue of the continued use of asbestos in commerce in this country, certainly the Bureau of Mines in the Department of Interior has long held the position that is at variance, probably, with what EPA proposed course of action is.

Senator BAUCAUS. Hasn't the OMB taken the position there should be no ban? Are you aware of that?

Dr. MOORE. In the interactions that I had with OMB in getting out the proposed ban and phase down role, OMB questioned the total ban at this time of some of the products that contain asbestos or the use of asbestos in some areas.

On the other hand, they also conceded that some of the proposed immediate bans were beneficial.

Senator BAUCUS. What do you say to those organizations that generally support this legislation? As I understand it, organizations like PTA, National Education Association, National Association of School Boards, there's a whole host of organizations.

You can say here today the bills don't make much sense but these other organizations represent the people who are concerned more directly; to them they make a lot of sense. What do you say to them? Aren't they closer to the problem?

Dr. MOORE. Senator, I think I would say to them what I said in my testimony and that is, I think what we all agree on what we want to accomplish. I think the difference is how one wants to get there. There seems to be a feeling, which frankly puzzles me a bit, that the establishment of regulations in certain places is going to solve the problem when, in fact, I don't think the establishment of regulations is going to solve the problem at all. I think the key to solving the problem of asbestos in buildings is to get people with informed judgment at the local site who can make the appropriate judgment by giving them as much education and technical assistance that is needed so they make the right choices.

Senator BAUCUS. Don't these bills give the EPA the authority to set the regulations and also the degree to which the regulations and the standards reflect it?

As I understand it, one of your major concerns is you could get rigid, inflexible standards that might cause more problems than they solve. Yes, that's a legitimate concern, but we're trying to address that concern in these bills by providing that EPA build in their requisite flexibility.

Doesn't that move us toward a goal of reducing the hazard of asbestos in public buildings and isn't that the goal we should really be keeping our eye on, and how do we get the job done? Not on splitting hairs and nit picking and bickering over one approach for another, but basically, figure out how are we going to work together to reduce the hazard of asbestos. Isn't that really what we should be doing?

Dr. MOORE. Senator, we think we do——

Senator BAUCUS. And don't you have bills that help you do that by allowing EPA to have the requisite flexibility?

Dr. MOORE. Senator, I think, in some circumstances, the bill could be inadvertantly counterproductive and I think that's what we're objecting to. We do have information out there that I think can give guidance as to how to figure out whether you've got asbestos and if you do have asbestos in your building, whether or not there may be a problem with that asbestos. Choosing a course of action is a function of where the material or the condition that it may currently be in and also guidance available about how to proceed if those circumstances exist.

For example, there is a requirement in the legislation that we come up with a number of regulations that have to be issued in 6 months. There's no way I can promulgate and finalize regulations in 6 months. The Administrator's Procedures Act that will preclude this.

Senator BAUCUS. Why don't you just say, you bet, the basic point of the bill is a good idea, but just give us a little more time. Why don't you approach it that way?

Dr. MOORE. I'm not sure that putting what the information and guidance we have right now into a regulation is necessarily going to do anymore toward solving the problem we all want to solve.

Senator BAUCUS. Why isn't your present, "guidance program" solving the problem?

Dr. MOORE. Why will it?

Senator BAUCUS. Why is it not?

Dr. MOORE. I think it's a function of time. I think it's well on its way toward correcting some of the main issues that are associated with asbestos. We have rewritten the guidance, we have come up with other types of guidance that some States have incorporated into some of their legislation. I think we're well on the way to it.

I think if one can argue about anything, it's the pace. Is it being used by the States and the local governments fast enough, broad enough?

The main issue is, Senator, I come back to the same point, we think that we can do a fairly good job of articulating those circumstances in which asbestos is in a state that you need to take corrective action.

We also think that we can identify asbestos that is in good shape, therefore, carefully watch it, but you don't need to do something. As you go from those ends, toward the middle, I don't think I can write a regulation that tells you what to do. You've almost got to make that determination at a local site.

Senator BAUCUS. OK. Let's assume that you proceed the way you are presently under current law. Let's assume that. Given that assumption, what are EPA's bench marks?

That is, what percent of the problems solved by what dates? You have to have specified bench marks if you're going to get anywhere, otherwise we're just a bunch of talk and we're going to be talking from now until dooms day. What are EPA's specified percentage bench marks and by what dates? What are EPA's goals? You've got to have some goals. What are they?

Dr. MOORE. I think a clear goal would be in the area of contractor certification and training that all States have something in place. Well, the goal would be that all contractors who are doing this work be competent and knowledgeable on how to go about doing this. One way to get there is to have legislation in place at a State and local level that would maximize that possibility.

Senator BAUCUS. It sounds like you don't have any bench marks, you don't have any goals. To be honest with you that's what I get from listening to you. Do you?

Dr. MOORE. No; I wouldn't say that. I think our goal is to try to get model legislation passed by all the States. A year ago we had 4 States that had such things. Today, we have 20 that have passed such legislation. We've got 10 more with legislation pending. I would say we're making pretty good progress toward that goal, Senator.

Senator BAUCUS. I'm talking about asbestos.

Dr. MOORE. I'm talking about asbestos. These are contractors who are going to come in and try to work on a building where asbestos is present in a deteriorated condition and make sure that they take that out using materials that pose no risk to the occupants and eliminate the asbestos hazard.

Senator BAUCUS. By what date will all of our schools be certified in the States?

Dr. MOORE. By what date would schools be certified to the State?

Senator BAUCUS. Be safe for children. Any goals, any dates?

Dr. MOORE. We don't have a regulation that states a school must certify. We have a regulation in place that says that schools must inspect their buildings for the presence of asbestos and if, indeed, they find it's present, to notify the people whether it be teachers or parents that, indeed, there is asbestos in their building.

What we would like to do is to see that they go one step further which is beyond our regulation, and that is that they come up with an operations and maintenance or abatement plan in those instances in which asbestos is found.

Senator Baucus. I understand that EPA published an evaluation survey, I guess in October 1984, finding that fully 90 percent of local education agencies not in full compliance. Is that accurate?

Dr. Moore. I assume the figure is accurate for 1984. Noncompliance with the asbestos in schools regulation was very high.

Senator Baucus. When will that 90 percent be reduced to a lower percentage.

Dr. Moore. That percent has dropped, but I think it is still unacceptable, Senator. Currently it is somewhere around in the sixties.

Senator Baucus. In the sixties today?

Dr. Moore. Sixty some percent.

Senator Baucus. What's your goal for a year from today?

Dr. Moore. My sense is that that approach is not going to get a whole lot better. It might get down into the fifties, but we don't see that we're going to get it much lower.

Some of the reasons for the high percent of noncompliance is violations of records keeping requirements as opposed to failure to inspect.

We're trying to aggressively attack those schools that just totally ignore the requirement that they inspect.

Senator Baucus. I don't want to take everybody's time here. Thank you.

Senator Durenberger. Quentin.

Senator Burdick. Mr. Chairman, I would ask that my prepared statement be inserted in the record.

Senator Durenberger. Without objection, it will be inserted at the beginning together with the other opening statements.

Senator Durenberger. Let me ask you a couple of questions that tie in with the questions Max was asking.

Do you know a fellow by the name of Bedell who is Wendy Graham's assistant at OIRA and OMB?

Dr. Moore. Yes, sir, I know the gentleman, Robert Bedell.

Senator Durenberger. Robert Bedell.

Dr. Moore. Robert Bedell.

Senator Durenberger. And, is that the fellow that set up a meeting with Canada that John Dingell told us all about on the asbestos issue?

Dr. Moore. I did not attend that hearing.

Senator Durenberger. You what?

Dr. Moore. I did not attend that hearing so I don't know the answer to that question, Senator.

Senator Durenberger. Do you know whether Bedell set up a meeting between the United States Government officials and Canadian Government officials on the subject of asbestos?

Dr. Moore. The only thing that I know that is relevant to that subject is what I have read in the newspapers. I do not know whether he set up a meeting or whether the Canadians asked for such a meeting. I am aware of the newspaper accounts of the hearings and if they were correct, indeed, a dialog did occur between Mr. Bedell and some Canadian Government officials. I think what you're alluding to is that there was a telegram or some type of communication from the Embassy back to the Canadian Government that summarizes their perspective of what was discussed at that meeting.

Senator DURENBERGER. I guess what I am alluding to is whether or not you know if this administration has a policy that the EPA, and I would guess that it would be you, would be involved at anytime that there is a discussion between governments on the subject of asbestos or asbestos in the schools or the removal of asbestos or whatever.

Do we have a policy that would require the involvement of the Environmental Protection Agency in any meetings between the United States Government and, say the Canadian Government or some other government. Do we have a policy like that?

Dr. MOORE. I am not aware of the existence of such a policy.

Senator DURENBERGER. For the record, describe the requirements that OMB has placed on you, if any, as you move into this rulemaking process. I am particularly concerned to know whether OMB has required that you include the business loss to Canadian firms as a cost of the asbestos rule that you would balance against the so-called benefit to American citizens.

Dr. MOORE. That issue never came up in their review of the proposal before it went out and I have never heard any comment on it subsequent to that.

Senator DURENBERGER. What requirements have they imposed on you with regard to cost benefit analysis?

Dr. MOORE. Since the Toxic Substances Control Act is a cost-benefit analysis statute, we feel we had to perform a cost-benefit analysis in the promulgation of the ban and phase-down rule.

To my knowledge, the only request that was made by Bob Bedell to me, just prior to their completing the review of that proposed phase-down rule was whether or not we would consider including in the proposal, to draw public comment, a requirement for labeling on certain products that were associated with asbestos. That was the only change that was made in that rule when it was resubmitted over here.

Senator DURENBERGER. And no one on his behalf has suggested any other requirements to you?

Dr. MOORE. No; I must be candid that in a review of this rule as with any rule, there are staff within OMB that have a fairly detailed dialog on highly specific and technical points on various aspects of maybe the economic analysis or some of the other aspects of the rule. That would be the only type of dialog that I know that was going on. That would be at the staff to staff level.

Senator DURENBERGER. I ask you these questions because I also have jurisdiction over OIRA in the Governmental Affairs Committee and we're both, the House and Senate, carrying on a dialog, of sorts, with OIRA, particularly with regard to their, at least past fetish for substantiating every single economic impact, if you will, on business firms who produce products in one way or another. I am not taking a position one way or another, but their use is going to be regulated; it's just that we have a very difficult time determining how much influence OIRA and OMB has on you and EPA and the rulemaking process because they won't tell us.

We have an almost impossible time getting information from them about the influence that outside organizations, agencies, individuals have on them in the rulemaking process so I hope that my questions don't embarrass anyone by their implications. But, we have some reason to believe that through the Canadian Government, some kind of influence, if you will, is being brought or potentially will be brought to bear on this rulemaking process.

So obviously whether it's from over in Governmental Affairs or it's over here I, for one, will be watching this process very very carefully, not because I have anything against Canadians or business or anything else, but just because I believe that you, at EPA, need to be freed to make some appropriate rules in this process.

We need to know where the influence is coming from now, particularly because it is Canada and because we have this well publicized relationship that almost unseated a Canadian Prime Minister that seems to be playing games with acid rain, I expect we'll play games with asbestos.

Having said that, I want you to know why I will rely heavily on you and why your record in the past on this subject, in the administration, is held up, at least by me and the members of this committee as something to be emulated in terms of its impartiality for everyone else in this administration.

Dr. **Moore**. Senator, I might interject, that indeed it is not uncommon that we do have communication with foreign governments on issues of rulemaking in asbestos in addition to the Canadians expressing their views to us directly. We also interact and will continue to have interaction with the Government of Sweden as well as the Government of Switzerland to share with us their views, either their support or the lack thereof.

Senator **Durenberger**. All right. Thank you very much. I appreciate your patience with us and I appreciate the patience of the following individuals who we will now call up as our next panel. Lloyd A. Kelley, Jr., superintendent of schools, Rutland, VT on behalf of the American Association of School Administrators; Dr. Roberta Coffin, the commissioner of the Vermont Department of Health, Burlington, on behalf of the Association of State and Territorial Health Officers; Bill Smith, the president of Masterclean of North Carolina from Winston Salem, and John M. Laping, member of the board of the American Institute of Architects.

I appreciate your being here and, as you know, this hearing has been abbreviated. I regret that and, as I indicated at the beginning of this hearing, you will be limited to 5 minutes in your opening remarks and your statements will be made a part of the record and the record will remain open.

If we have questions we need to ask you beyond what time is available to us today, we will keep the record open to receive those responses. We will probably have another hearing on this subject. So, even though we're putting you on airplanes going home more quickly than we might like to, we want you to stay involved in the process.

First, we will start with Lloyd Kelley.

STATEMENT OF LLOYD A. KELLEY, JR., SUPERINTENDENT OF SCHOOLS, RUTLAND, VT, ON BEHALF OF THE AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

Mr. **Kelley**. Mr. Chairman, members of the Committee on Environment and Public Works, we thank you for the opportunity to appear before you and present the feelings of the school superintendents with regard to to S. 2083, the Asbestos Hazard Emergency Response Act of 1986.

You have my written testimony, for the record, and I will merely highlight and amplify that testimony.

AASA is pleased that this bill would permit the provisions to be administered by State governments rather than the EPA.

Our experience has been generally good in working with our State agencies in similar type programs such as OSHA. The States are generally more knowledgeable about our schools and the communities which they serve as long as a baseline of protection exists under the Federal legislation, we feel the States should be free to implement those standards or to establish higher levels of protection if they deem it appropriate.

We are pleased that S. 2083 permits the placing of responsibility for the training and certification of laboratories and contractors with the States and permits the States to approve plans for abatement and post abatement management of asbestos hazards.

Our commissioner of health, Dr. Roberta Coffin, from the State of Vermont is here today to testify on the bill and from my written testimony, you realize that I feel good about the way in which our State has gone about addressing this problem.

I have worked with the department and our State legislatures in establishing a State policy. Tomorrow I will be meeting with my colleagues at our annual spring conference and will be briefing them on Federal and State initiatives in this area.

If coordination such as this is required, if indeed we're going to be able to produce the types of changes that are needed in our schools. There is an astounding lack of information about asbestos and its hazards among my colleagues.

Certainly if anything can be done through this bill to encourage and support that type of training activity, it would be greatly appreciated and badly needed.

We are opposed to the levying of administrative fines on local education systems.

Whether a system is large or small, whether the fines are greater or lesser. The fines take financial resources which are in short supply away from programs which benefit children.

It is my understanding that currently the Environmental Protection Agency can impose fines of as much as $25,000 a day, with those fines reverting to the Treasury of the United States.

There should be a better way of insuring compliance by local districts. If not, at the very least, these fines should be dedicated to the abatement of the problems which gave rise to their imposition. It doesn't make any difference whether it's a $24,000 fine against a small district in the State of New Hampshire or a half a million dollar fine against a larger district in the State of Michigan. That takes a significant amount of resources away from our basic mission, the education of children.

We would like to see the bill either reduced or eliminate or, at least redirect those fines.

As you know, the scope of the problem is hugh in terms of abatement and control. The current response is one of providing loans and/or grants to poorer districts. Very frankly, the need is for grant money, not loan money.

At the local level, tax resources are being fully utilized. States have not rushed forward, by and large, to make funds available at that level to address this problem.

My colleagues and I have been burned too often with expensive programs mandated at State and Federal levels where they become a very junior partner.

We would ask you to provide the necessary funds to carry forward this program in some sort of a reasonable timeframe for implementation. In our State, there are only 2 school districts out of approximately 270 that applied for any of this money. Very frankly, again, because it was grant money—it was loan money instead of grant money by in large and frankly the size of the grants for loans was so small that it would cost us as much or more to secure the grant or loan than not to apply for it.

I am pleased to see that the bill addresses the issue of insurability for those responsible for removing asbestos containing materials. It is my understanding that the bill permits self insurance pools to be formed by contractors. Exposure to risk and liability for damages must be addressed, not only for the contractors, but also for the school districts.

As we become increasingly aware of the presence of asbestos and we become increasingly aware of the severity of the problems that it creates, we become increasingly culpable.

The next round of law suits is very likely to be against school districts as opposed to manufacturers. Settlements could well bankrupt school districts.

It is hard for us—it is as hard for us as for the contractors to obtain appropriate insurance protection at reasonable rates.

It would seem to me that, if indeed, if we comply with the terms and conditions of this proposed statute that, indeed, we should be certified as having met those conditions. It would certainly be helpful in terms of, at least showing good faith effort on our part to respond.

I will return to the issue of certification a little later in my testimony, Mr. Chairman.

Senator DURENBERGER. You don't have a lot of time.

Mr. KELLEY. All right, I'll be short.

Senator DURENBERGER. Your 5 minutes are up. We will read it later in your testimony. Have you got sort of stemwinder to finish up.

Mr. KELLEY. Yes, I do. The staff of our Federal Policy and Legislation Committee stands ready to work with the committee on refining the bill. We applaud the efforts of Senator Stafford and the other sponsors of the bill. We are sure this committee will bring forward a bill that adequately protects our citizens from this insidious killer and yet responds to the realities faced by those of us responsible for the operation of our schools. Thank you, Mr. Chairman.

Senator DURENBERGER. Thank you very much.

Dr. Coffin.

STATEMENT OF ROBERTA R. COFFIN, COMMISSIONER, VERMONT DEPARTMENT OF HEALTH, ON BEHALF OF THE ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICERS AND THE VERMONT DEPARTMENT OF HEALTH

Dr. Coffin. Thank you very much.

Mr. Chairman, members of the committee, thank you for this opportunity to talk with you about S. 2083, the Asbestos Hazard Emergency Response Act of 1986.

I am Dr. Roberta Coffin, Commissioner of the Vermont Department of Health. I am representing the Vermont Department of Health and the Association of State and Territorial Health Offices.

I am also a board certified pediatrician and a member of the Academy of Pediatrics.

The Vermont Department of Health and ASTHO, strongly support a comprehensive and systematic approach to asbestos control which S. 2083 provides. Asbestos is a well documented human carcinogen and a serious public health problem.

Asbestos exposure causes asbestosis, lung cancer and mesothelioma, cancer of the lining of the chest and lung or abdominal cavity.

Exposure to asbestos combined with cigarette smoking creates a synergistic effect which greatly increases the risk of developing lung cancer.

These debilitating and devastating asbestos related diseases have also been reported with both high level exposure and long-term low level exposures. These low level reports were not occupationally related but due to household or environmental exposures.

The latency period for the cancers is between 10 to 40 years after exposure. Due to the long latency period, the population at greatest risk is children who are exposed to airborne asbestos. Exposure time for schoolchildren could be 6 or 7 hours a day for periods of 12 years.

Without the proper control measures, future generations of school children will continue to be exposed to unnecessary amounts of asbestos fibers as insulation, ceiling tiles, and other classroom and building materials succumb to old age, vandalism, and water damage.

Asbestos containing materials were found in 75 percent of 336 Vermont schools constructed of renovated between 1946 and 1974, according to a study which the Vermont Department of Health did and which was published in the American Journal of Public Health in July 1981. Asbestos is a widespread building problem and not confined just to school buildings.

As a result of Vermont's school survey, and EPA pressure on schools under the School Asbestos Health Hazard Abatement Act, and subsequent attempts at control measures, we have experienced many of the problems associated with uncontrolled asbestos abatement. Unqualified and incompetent abatement contractors have performed sloppy, hazardous work endangering their workers and building occupants.

OSHA-permitted air levels are too high to protect against asbestos related cancers according to NIOSH and EPA.

School districts have delayed abatement activities due to a lack of funds. Public outcry has caused bitter disputes in small towns over the urgency of abatement. I have reported on one Vermont situation in my written testimony.

The current EPA school program does not solve the public health problems, it simply requires that all schools with friable asbestos notify employees and parents that a cancer causing substance is in their school. This creates the situation where communities with vocal, concerned parents, or those with financial resources, may undertake inappropriate, untimely action.

Federal action is needed to strengthen existing State programs and create some much needed uniformity between States in regard to standards, contractor certification, and building inspections. These controls are imperative and applicable for all asbestos abatement activities in public buildings.

I am very pleased to see that S. 2083 proposes that not only abatement contractors, but all persons involved with asbestos evaluation and abatement will have to be accredited. One weak link in the chain of professionals involved with asbestos abatement can cause people to be unnecessarily exposed to asbestos fibers and create an increased public health hazard where little previously existed.

Tests for asbestos in air provide information at one point in time, but other inspection criteria may be more valid for setting asbestos abatement priorities.

S. 2083 addresses the very important issue of liability insurance for asbestos contractors. The establishment of an asbestos abatement trust fund is a key portion of the bill. The current funding scheme for the Asbestos in School Hazard Abatement Act creates a situation in which it is very difficult for schools to plan abatement because of the uncertainty of funding each fiscal year and because of their concern about loans which have to be repaid, as my colleague, Superintendent Kelley has detailed.

In conclusion, I feel that S. 2083 will provide realistic solutions to many of the problems with asbestos control for our schools. Without comprehensive Federal action for schools and other buildings, States will have to continue to attempt to solve piecemeal what is truly a national problem.

I will be happy to answer any questions. Tnank you very much.

Senator DURENBERGER. I thank you, very much, Dr. Coffin.

Mr. Smith.

STATEMENT OF WILLIAM B. SMITH, PRESIDENT, MASTERCLEAN OF NORTH CAROLINA, INC.

Mr. SMITH. Mr. Chairman, members of the committee, I thank you also for the opportunity to speak to you. I am speaking as an asbestos abatement contractor. My background includes 8 years of such work directly dealing with nothing but that product. As such, I have got a lot of associations with National Asbestos Council, the NAAAC, the Asbestos Abatement Association and a few other nationwide groups of contractors and, I believe my commentary would be typical of theirs as well, however, I do not speak on behalf of them today. This is strictly my own testimony.

I support both the bills being discussed today, primarily because of two conditions. One is a required certification of contractors and two, because of a forced action in a controlled fashion. These are the two things that I see in buildings, not as much in school buildings, but in the Federal and private buildings, that are problems today and they are immense problems.

The certification issue should go without saying, but it has gone without saying too long, it needs to be pinned down so as to not only protect the health and welfare of the private sector, but to give them some guidance on what should be done. We have seen too many cases—a case in point where a building was worked on for 5 months by a low bidder who was tackling his first job, calling for clean air and ultimately he was displaced from the job and our company was hired to do the work. We removed five truckloads of asbestos from the one area that he had said was clean before it met clean air standards and at a cost which ultimately, of course, cost the owner considerable more money.

The second area of forced action in a controlled manner is the one that we believe, really, the private sector needs more guidance on than what they get right now.

I am asked continuously and academically, I am an engineer, but I am always asked what legal requirements do I have. I am not a lawyer and I can't address that issue, but the public does not know. Building owners and managers do not understand what they are required to do——

Senator DURENBERGER. You have to get this line down. It goes something like this. I am not a lawyer, but—then you proceed to do what makes sense.

Mr. SMITH. Yes, sir, and that works very well I might say.

Senator DURENBERGER. Until you land in court, right.

Mr. SMITH. We have seen many terrible problems. We are involved in one right now where a building has had four floors empty for 1½ years and they ultimately—the owner is struggling, trying to figure out how not to spend the money, in the course of which he has lost more rent than he would have paid to have the work done to begin with. Had he been required to meet the requirements of this bill, he would have had some good guidance into what to do.

I feel like I can comment, if the light is still green on two other things, one which involves the cost of such work and the other which involves, can we handle this work if all this work does occur.

As figures and I don't know what you might have received in the past, the turnkey cost of removal and retrofit ranges in the $10 to $20 per square foot of floor area type of cost. At least a fourth, perhaps a third of this cost, can be merged in with standard renovations as they are going to repaint a building, put new ceilings up, new light fixtures in anyway. Done in a controlled manner, you can therefore control the costs going into it and actually minimize what happens.

At the same time, with certified contractors, competitively certified and involving competitive bidding, should be able to get the best price available. That best price is going to get higher, nothing seems to get lower and certainly it has gotten higher for us in the last couple of years.

The last question about, can we handle the workload. We have seen some panic situations, as you all have, of let's immediately do this and the answer to that would be, no, we could not begin to handle that kind of a solution to the schools and/or Federal buildings and/or private buildings, even a small quantity of them, if we said we got to have it all done by December 31, 1986. But, putting into perspective, as these bills do, the requirement to address the issue, survey it, address it and make a plan of actions, which is functional, they can be controlled. We can beef up our work forces to handle a considerable amount more than we do now. If we know in advance and plan for it, we can do it very carefully.

I support both bills wholeheartedly. Thank you, Mr. Chairman.

Senator DURENBERGER. Thank you very much.

Mr. Laping.

STATEMENT OF JOHN M. LAPING, MEMBER OF THE BOARD, AMERICAN INSTITUTE OF ARCHITECTS

Mr. LAPING. Thank you. My name is John Laping and I am a practicing architect from Buffalo, NY, a partner in the firm of Kideney, Smith, Fitzgerald, Laping. I also serve on the Board of Directors of the American Institute of Architects.

Mr. Chairman, Senators, we at the AIA commend you and the subcommittee for your concern in holding this important hearing and examining the asbestos abatement issue.

For architects, asbestos abatement is, in large part, a professional liability issue. Asbestos abatement regularly comes up as part of the design considerations when renovating or rehabilitating existing buildings.

However, in October of this year, my firm, for one, will not be able to renew its liability insurance policy with any coverage for asbestos abatement. That exclusion took effect the first of the year and most firms now do not have insurance for any asbestos related work.

Last year, there were 15 insurance companies offering architects and engineers liability insurance, and this year we're down to 2. Insurance companies do come and go and they make all kinds of promises, but they aren't always around. They are avoiding anything to do with asbestos as a result of the Johns Manville product liability cases. To them, asbestos abatement is as unpredictable at rehabilitation sites as it is in the courts. This unpredictability results from one simple fact; there currently is no national standard of care for the removal and abatement of asbestos. Whatever you may say or we may say to persuade insurance companies of our competence in this area, they will not budge without standards on the manner in which asbestos should be abated.

Before Representative Florio's subcommittee in the House, the AIA testified that one standard, accepted by the Federal Government, might make adequate insurance available once again in the asbestos abatement field. We have since asked the Victor O. Schinnerer & Co., Inc., managers of CNA's architect/engineer professional liability insurance programs, to examine that premise.

I would ask your permission to submit its analysis for the record. In essence, it says that "The creation of such standards and their acceptance by the courts . . . will vastly improve the likelihood of the availability of professional liability insurance . . ." for asbestos abatement.

We submit, Mr. Chairman, that without passage of this or similar legislation, adequate insurance will not become available for asbestos abatement.

The Asbestos Hazard Emergency Response Act and the Federal Building Asbestos Hazard Abatement Act are precisely the first steps needed in the ultimate elimination of the danger now imposed by asbestos. The Environmental Protection Agency has been ducking its responsibility for some time on this, and its track record does not suggest that this performance will improve of its own accord in the future. These bills would require them to face that responsibility.

The National Institute of Building Sciences is soon to release a very detailed set of guidelines on abatement procedures. Representatives of EPA, the AIA, the Safe Buildings Alliance, various insurance groups and others have spent countless hours developing this guide. The AIA recommends that you require the EPA to adopt the NIBS guidelines as the Federal standard of care.

By spelling out standards on how asbestos is to be abated, and by whom, and by giving those standards the force of law, be it statutory or administrative, the EPA could move ahead with effective enforcement procedures.

S. 2300 and S. 2083 also call for the EPA to promulgate a standard for defining when asbestos is to be considered hazardous and therefore abated. The AIA believes that these bills put the responsibility for such a delineation precisely where it should be. We are aware that the EPA does not want this responsibility. They are not qualified, they say, to determine hazardous levels of asbestos fiber concentration. So they buck the issue down to the States, who buck it to the individual localities and school districts. No matter how inadequate the EPA may allege it is to the task at hand, it is surely better able to address the issue than are the indivudal jurisdictions.

Finally, as important and as helpful as S. 2300 is, the cost recovery paragraph in section 210 presents a problem. The section proposes that the Administrator seek reimbursement from "any potentially responsible party" for the cost of abatement.

Mr. Chairman, asbestos was used so extensively up until the seventies that it now permeates our built environment. The Manville asbestos cases have been in the courts since the early sixties and have cost untold dollars in transaction costs. If section 210 were enacted, as drafted, you could be creating over 700,000 individual cases that would need to be litigated.

To try and assign responsibility for each application of asbestos would involve such substantial court transaction costs that the courts would be tied up for decades. Apparently there were some people who suspected the dangers involved with its use some time ago, but for the rest of the country, it was the standard insulation against fire, it had wonderful insulation qualities and certain acoustic properties.

Mr. Chairman, I thank you and I would be pleased to answer any questions that you may have.

Senator DURENBERGER. Thank you very much, Mr. Laping.

Senator DURENBERGER. I thank all of you ladies and gentlemen for your willingness to appear here today on behalf of the various

I thank all of you ladies and gentlemen for your willingness to appear here today on behalf of the various associations.

I will introduce into the record, following the other opening statements, the statement on S. 2083 by our colleague and a co-sponsor of that bill, Senator James Abdnor of South Dakota.

Senator DURENBERGER. I also have a letter from the Administrator of the Environmental Protection Agency, Mr. Thomas to the Honorable Norman F. Lent, ranking minority member of the Subcommittee on Commerce, Transportation and Tourism of the Committee on Energy and Commerce.

[The letter referred to follows:]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

MAY 14 1986

THE ADMINISTRATOR

Honorable Norman F. Lent
Ranking Minority Member
Subcommittee on Commerce,
  Transportation, and Tourism
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Mr. Lent:

Thank you for your letter of March 11, 1986 concerning the Asbestos Hazard Emergency Response Act of 1986. As you know, funds for such legislation are not in EPA's budget. However, I am sending the information you requested on the potential impact of the legislation. The full Agency position on this proposed legislation will be discussed at the May 15 Senate Environment and Public Works Committee hearing. I will answer each of your questions individually.

Question 1. The potential costs to EPA of implementing the requirements of this legislation.

The bill would require EPA to develop regulations and model accreditation plans, develop a plan for review of management plans by states, review management plans of schools if the states do not take action, and monitor compliance. EPA has preliminarily estimated the following costs, measured in person years of EPA staff and contract dollars. The compliance monitoring costs would be incurred over the next 15 years and future costs are discounted.

	Person Years	Person Year Costs	Contract Costs	Total Costs
Develop rules	8	$320,000	$375,000	$695,000
Develop model accreditation plan	2	$80,000	$250,000	$330,000
Develop plan for review of management plans	2	$80,000	$80,000	$160,000
*Review Management Plans	96	$3,840,000		$3,840,000
Study of public buildings	3	$120,000	$750,000	$870,000
Compliance Monitoring (beyond current program)	155	$3,700,000	$21,400,000	$25,100,000
Total				$30,995,000

* Alternatively, EPA could increase contract resources and reduce staff.

EPA has estimated the following costs for the 50 states. Of course, these costs could be higher or lower depending upon how many states implement their own programs.

	Person Years	Person Year Costs
State program development	25-50	$1-2 million
Implement accreditation program	750	$15.2 million
Develop plan for review of management plans	25	$1 million
Review management plans	115	$4.6 million
Total		$21.8-22.8 million

Question 2. The potential costs to schools to certify inspection, develop management plans and abate asbestos according to the estimates of this legislation. Please include the estimated average cost and the potential range of cost per school.

EPA estimates total costs to schools of actions required by the legislation based on an EPA national telephone survey of the extent to which friable asbestos material was in schools ("Evaluation of the EPA Asbestos-In-Schools Identification and Notification Rule"). It should be noted that a quality assurance check by EPA after the survey indicated that the number of schools with friable asbestos material was underestimated because a number of schools did not report friable asbestos in boiler rooms and friable asbestos that was enclosed or encapsulated. For purposes of analysis, EPA assumes that the cost of EPA regulations and the cost of the "hammer" provisions are identical. Costs are assumed to occur over 15 years and are discounted at a rate of 10% yearly. EPA must emphasize that these estimates are preliminary approximations.

It is important to note that many schools have taken or will take abatement action on their own, even if this legislation is not passed. Thus, in many respects, it would be inaccurate to attribute all abatement costs to the legislation. EPA does not have precise information on the extent of ongoing state and local abatement activity. However, to attempt to give proper credit for ongoing abatement activity, EPA is not including in the costs of the legislation the estimated costs of abatement or operations and maintenance activity in schools which indicated in the EPA survey that they either (1) had removed or enclosed friable asbestos material, (2) were in the process of doing so, or (3) planned to do so eventually. With this assumption, the costs of the legislation are estimated as follows:

Inspection and sampling	$219 million
Plan development	$18 million
Abatement	$727 million
Operations and maintenance	$109 million
Labeling	$3 million
Total	$1,076 million

This is an average cost of about $10,000 per school (including schools with no friable asbestos material) and about $25 per student for all the above actions. Costs would range from an average of $2,000 or less for schools with little or no asbestos material to an average of over $70,000 for schools which must remove significant amounts of asbestos material.

The above estimate assumes that schools would be required to inspect for and sample all currently and potentially friable asbestos material. If schools were only required to inspect for and sample currently friable material, the costs of the legislation are estimated as follows:

Inspection and sampling	$86 million
Plan development	$18 million
Abatement	$727 million
Operations and maintenance	$109 million
Labeling	$3 million
Total	$943 million

Question 3. The ability of EPA, the States and the local education agencies to meet the deadlines in the bill.

It would be extremely difficult or impossible for EPA to develop and promulgate the regulations required by the legislation within six months. As you know, EPA must propose a rule for public comment and then analyze and respond to those comments before a final rule can be issued. Rulemaking of this complexity normally takes a year or more.

Similarly, it would be very difficult for states to adopt a model certification plan within 180 days of EPA's development of a model plan. State adoption of such a plan may well require passage of legislation and many state legislatures may not be in session during this period.

Finally, the time required for EPA or State review of a school asbestos management plan is inadequate. Depending upon how many states establish a system for review of management plans, EPA could have to review thousands of these plans within a short time period. It is questionable whether EPA could find enough trained personnel to review this many plans in a short period of time. States would face a similar problem. In addition, since these plans must be very specific for each particular asbestos situation, it would be very difficult for a State or EPA to provide meaningful review without extensive site visits.

Question 4. The appropriateness and impact of the definition of "hazardous asbestos" in the bill.

The bill would require EPA to promulgate regulations which prescribe standards for the circumstances in which the presence of asbestos in a school building shall be considered hazardous. At a minimum, asbestos which is visibly damaged or readily accessible in a manner which presents a reasonable likelihood of human exposure to airborne asbestos fibers shall be considered hazardous according to the bill. The "hammer" provision of the bill has a longer definition that is also very broad.

EPA is concerned that these broad definitions will include a large percentage of asbestos in schools since almost all asbestos presents a likelihood of some human exposure. Under this definition then, schools would be required to take abatement action in situations where immediate abatement may not be necessary.

It may be better to define hazardous asbestos more narrowly to require immediate abatement in a smaller number of situations. These would be situations where friable asbestos material has suffered major physical damage or major water damage. By major physical damage EPA means situations involving debris on horizontal surfaces, hanging material, dislodged chunks, scraping, indentations, or cracking. By water damage, EPA means situations where the material is discolored or stained and pieces of the material have been dislodged or delaminated from the substrate.

Question 5. The potential cost and availability of scanning electron microscopy.

EPA estimates that analysis using scanning electron microscopy (SEM) costs about $100-$300 per sample and that over 20 laboratories offer SEM analyses. Unfortunately, only a fraction of these laboratories have any experience in asbestos analysis.

More important, as stated in EPA's "Guidance for Controlling Asbestos-Containing Materials in Buildings," which the legislation would make a mandatory regulation, SEM "has not been systematically evaluated nor has the reliability of SEM measurements been established." Thus, requiring SEM without a method or standard to distribute to laboratories could result in uncontrolled and questionable results in the field. In addition, SEM has a technical limitation, since it cannot typically detect fibers with diameters of less than 0.20 microns.

EPA guidance currently recommends transmission electron microscopy (TEM) as the most reliable method of measuring airborne asbestos fibers. TEM is able to definitely distinguish asbestos from other fibers and is currently the only method which can detect thin fibers down to 0.0025 microns in diameter. EPA has a provisional method for measuring airborne asbestos fibers using TEM and, in coordination with the National Bureau of Standards, has developed standard reference materials. EPA recognizes that several drawbacks exist for TEM: the price of $200 - $600 per sample, the two to seven days required for analysis, and the limited number of laboratories (about 20) providing analytical services for TEM. In situations where economic or technical reasons limit use of TEM, EPA's guidance describes how phase contrast microscopy (PCM) might be used.

EPA's Office of Research and Development (ORD) is currently evaluating the analytical methods for TEM and SEM. Technical improvements to the SEM methodology may produce better detection limits for SEM in the future. ORD is also developing material for quality assurance and performance audit programs for PCM, SEM, and TEM laboratories. If funds are available, EPA may be able to begin semi-annual performance audits of these laboratories in fiscal year 1987. However, EPA believes that more work is needed on SEM analysis before that technique can be legally required or even recommended in guidance. EPA continues to recommend that TEM be used to determine the level of asbestos in the building air after completion of abatement.

Conclusions

In conclusion, EPA believes that schools with asbestos material should continue to reevaluate the condition of the material periodically and that schools should take abatement action in appropriate cases. However, EPA believes that the bill's definition of hazardous asbestos is too broad and would require immediate abatement in many cases when such action is not necessary. Again, these issues will be discussed at the Senate hearing on May 15.

Thank you again for your letter. Please contact EPA if you need additional information.

Sincerely,

Lee M. Thomas

Senator **Durenberger**. With that, we will adjourn and we hope to have another hearing soon. Thank you.

[Whereupon at 11:03 a.m. the subcommittee was adjourned.]

STATEMENT OF
JOHN A. MOORE
ASSISTANT ADMINISTRATOR
OFFICE OF PESTICIDES AND TOXIC SUBSTANCES
U.S. ENIVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON TOXIC SUBSTANCES
AND ENVIRONMENTAL OVERSIGHT
OF THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

May 15, 1986

Mr. Chairman and members of this Subcommittee, I am pleased to provide testimony on EPA's asbestos program and the two bills concerning asbestos in buildings which have recently been introduced by Senator Stafford.

EPA's goal is to minimize the inhalation of asbestos which is in place in buildings. We believe that parents and employees should be informed about the presence of asbestos-containing materials in school buildings, that school officials should carefully maintain asbestos in good condition and take action to repair or remove material only when it is badly damaged. Judging by the legislation which Senator Stafford has introduced, you also support these goals and activities. Our points of agreement are many; our differences are mainly ones of strategy and process.

However, those differences are significant enough for EPA to oppose both bills. Our opposition is based on the probability that a federal statute could result in schools and other buildings owners losing the flexibility needed to make appropriate decisions based on local conditions. This could lead to the occurrence of further unnecessary and potentially dangerous abatement activity. Furthermore, we believe that the need to write regulations and meet Federal statutory deadlines would cause EPA to suffer a loss of momentum in the action it is currently taking. Finally, various provisions in the bill would result in substantial, unnecessary costs being incurred by Federal, State and local entities.

Before I comment on specifics in the legislation, I would like to briefly highlight several activities in EPA's asbestos program which reflect our momentum, and address this Subcommittee's concerns. I believe some of these activities will render some of these legislative proposals unnecessary.

Loan and Grant Program

In June, 1985 under the Asbestos School Hazard Abatement Act (ASHAA), EPA awarded $45 million in loans and grants to 340 schools across the nation. Congress has appropriated a second $46 million for loans and grants which we will award on July 31, 1986. This year EPA will continue to assure that Federal funds will only be awarded to school districts with friable, severely damaged, exposed asbestos and demonstrated financial need. We have learned a great deal from the loan and grant program which is applicable to schools in general. For example, the process we have developed to identify asbestos materials in hazardous condition is now being used by several States and school districts to prioritize their own abatement projects.

Training

Training provides contractors the skills to perform effective abatement projects which are protective of both workers and building occupants. Congress recognized this fact when it placed an important condition on the 1986 ASHAA awards. Schools which receive 1986 ASHAA funds must hire contractors who are either state certified or have attended an EPA-approved training course.

EPA has placed a special emphasis on providing many training courses for contractors. Last year we opened three national training and information centers at Tufts University in Boston, the Georgia Institute of Technology in Atlanta, and the University of Kansas in Kansas City. These centers have been extremely successful and have trained nearly 1500 building owners and managers, maintenance personnel, school officials, architects, consultants, abatement contractors, and workers in various aspects of asbestos identification and control. We are opening two additional centers this summer at the University of Illinois School of Public Health in Chicago and the University of California at Berkeley. The five centers will offer a variety of courses, including comprehensive hands-on training for contractors as well as seminars for school administrators and courses for inspectors.

EPA is also awarding one-time grants to the University of Utah, the University of Texas at Arlington, Rutgers Medical School in New Jersey, and Drexel University in Philadelphia. These universities will offer training courses for abatement contractors beginning this summer, providing the training required of contractors who wish to perform ASHAA-funded abatement work in schools. Finally, EPA is providing one-time grants to several non-profit organizations which will train workers and minority contractors in convenient locations. With all this activity, we expect to train thousands of workers and supervisors next year.

State Certification Programs

Another priority of EPA is the establishment of comprehensive State programs to train and certify contractors and oversee their work. Congressional interest in State certification is reflected both in the 1986 condition on ASHAA funding and in the proposed legislation. EPA has assisted States in developing contractor certification legislation. We developed a model plan based on the State of Maryland's program. Twelve States received grants last year to help them design programs based on our model plan; this year we will award an additional eighteen such grants. The response to the model plan and the financial assistance has been enthusiastic. A year ago only four States had active certification programs. Currently, twenty States have passed legislation and an additional ten States have legislation pending.

We have also sponsored technical seminars on the elements of a good training program as well as the details of comprehensive oversight. In September we are sponsoring a national conference on State asbestos legislation in collaboration with the National Conference of State Legislatures. This conference will allow States with existing programs to assist States which have not yet passed legislation. We also will be discussing Connecticut's school inspection program which may become a model for other States.

The Asbestos Hazard Emergency Response Act (S. 2083)

Turning now to the proposed legislation regarding asbestos in schools, I would like to point out where we agree, where we have concerns, and how the legislative goals might be achieved in a different fashion.

EPA Regulations to Set Standards

Section 202 gives EPA six months to issue a variety of standards to define when a hazard exists, when it should be abated, and how abatement work should be done. The description in the bill of asbestos which is hazardous and must be abated is "visibly damaged" or "readily accessible." These terms include nearly all asbestos which is found in school buildings. Many school districts could find themselves under a legislative requirement to remove asbestos-containing materials when it may actually be safer to leave it in place. In addition, the time frame of six months to propose and issue final regulations is impossible.

We do agree on the goals of Section 202: certainty and clarity for school officials and other building owners as they make decisions. Accordingly, we carefully considered the issues raised in the Senate bill, and concluded that our programs should be improved. I have asked my staff to begin drafting more explicit directions for school officials and the affected public on several of the points raised in the Committee bill. Specifically, we are developing a simple but effective procedure for school officials to identify hazardous asbestos materials based on EPA's existing process for prioritizing loan and grant applications. This procedure will identify asbestos projects needing immediate abatement. We will also issue a procedure to identify asbestos in good condition which should be monitored and carefully maintained in place rather than removed. Projects which do not fall in either of the above categories require case-by-case evaluation by a trained professional.

In summary, we believe that the terms describing hazardous asbestos in section 202 could force school administrators to divert funds needed to abate serious problems into unnecessary and potentially dangerous abatement projects. Furthermore, since abatement project varies and the abatement technology is constantly changing, EPA believes that a Federal statute, or regulation, locking in a particular methodology will take away the flexibility needed by local officials to deal with asbestos. Accordingly, the Agency generally prefers guidance, favoring a national regulation only when it is the most effective and necessary approach. In that regard, we have been assisting the Occupational Safety and Health Administration (OSHA) revise the asbestos construction standard. This new standard has a variety of effective work practices which will be required of private contractors undertaking asbestos abatement projects. When the OSHA standard is final, we will amend our regulation covering public workers to be equally protective.

Model Contractor Accreditation Plan

Section 203 of the Senate bill requires EPA to develop a model State plan to certify personnel who inspect buildings, develop and carry out asbestos management plans, and analyze bulk and air monitoring samples.

EPA agrees with the concept of a model plan. As I mentioned earlier, we have a very successful model State plan for certifying abatement contractors. We are now developing a model plan for State certification of inspectors and plan developers. The University Training Centers are teaching courses for personnel who inspect and develop abatement plans. The National Institute of Building Sciences (NIBS) has developed specifications for designing abatement projects. In short, we believe a model plan for inspectors and plan developers is a good idea and we are already working to develop it.

School Inspections; Asbestos Management Plans

Section 206 of the Asbestos Hazard Emergency Response Act requires school districts to reinspect their buildings, develop asbestos management plans, submit those plans to the Governor or EPA for approval, make the plan publicly available, implement the plan, and affix warning labels to asbestos-containing materials left in place in maintenance areas.

Mr. Chairman, as you know, an EPA workgroup has been considering possible additional Federal activities for the past few months. The proposed legislation has been analyzed by our workgroup. We agree that many of the activities are important to asure that exposure to asbestos does not increase over time. I would like to announce today that we plan to issue an Advance Notice of Proposed Rulemaking (ANPR) in the near future soliciting public comment on possible future Federal activities, which could include non-regulatory or regulatory approaches to such issues as reinspection of school buildings, development of management plans including operations and maintenance of material left in place, periodic reinspection to check for deterioration, and periodic notification for parents and employees. In addition, we may ask for comment on possible exemptions for schools which have already conducted adequate inspections, have developed management plans, have no asbestos remaining in their buildings, or are located in States with equivalent inspection and maintenance requirements.

A particularly difficult part of section 206 is the State/EPA responsibility to review and approve or disapprove potentially 45,000 school plans. Neither EPA nor the States have the resources or knowledge of local conditions to provide meaningful review and evaluation of these plans. The proposed period for review - 90 days - is totally inadequate. I strongly believe that appropriate and thorough evaluation of these school specific abatement and or maintenance projects is only possible at the local level.

Summary

To summarize EPA's basic position on the Asbestos Hazard Emergency Response Act, we believe it is simply not necessary at this time and could be counterproductive. We believe that the States and school officials should retain their ability to make case-by-case abatement decisions and to oversee those decisions. EPA has many activities underway to provide states with model programs which assist them in assuming direct oversight of asbestos-related work and to assist school officials inspect, plan for, abate, and carefully monitor asbestos materials. We have a program which is consistent with ideas expressed by Congress in this bill and is a more effective approach. Additional legislation at this time could be duplicative and would actually slow down our program.

Federal Building Asbestos Hazard Abatement Act (S. 2300)

I would like to now comment on the second Senate bill, the Federal Building Asbestos Hazard Abatement Act. I will comment first on the section dealing exclusively with Federal buildings. EPA strongly supports the concept that all Federal buildings should be inspected and that management plans be developed as appropriate. However, because of the numerous activities already underway, this legislation might be more confusing than helpful to the federal inspection and abatement effort.

Over the past several years EPA has provided technical assistance and advice to a myriad of Federal Agencies including the General Services Administration, the U.S. Postal Service, the Veterans Administration, the four Services in the Department of Defense and the Occupational Safety and Health Administration on their asbestos programs. These Agencies have made excellent progress in identifing and abating asbestos hazards in their buildings. Several Agencies have developed their own training programs with EPA assistance. These efforts have corrected many hazardous conditions in Federal buildings and put programs in place to address future problems. EPA is concerned that it would be counterproductive for new legislation with slightly different requirements to invalidate the progress the Federal Agencies have made to date.

Finally, I would like to comment on the bill's requirements concerning non-Federal public buildings. Schools have been the sole focus of EPA's regulatory effort in buildings. School children are an especially vulnerable population. The long latency period for asbestos related disease puts children at risk in their young adulthood. The Federal program in schools also provides a model for other building owners. All of the guidance we have developed for schools is equally applicable for other buildings. Finally, given a finite number of resources today and the prospect of declining resources over time, I would rather make our technical assistance program available to all building owners than attempt to regulate the 750,000 public buildings which may contain asbestos. For this reason we cannot support this bill or the concept of federal regulation of public buildings.

We believe our programs can and do serve as models by providing technical assistance to public building owners and managers as well as those who operate schools. Contractors undertaking abatement projects in public buildings are being trained and certified by States. Projects are being designed using specifications we helped develop. OSHA and EPA regulations cover worker protection, abatement work practices, and disposal techniques. These programs have resulted in voluntary inspections, and comprehensive abatement programs in a good number of public buildings.

Finally, we are planning to examine how certain corporations, hospitals, and retailers have implemented their asbestos programs. We plan to work with several groups to distribute case studies. By providing facts about good programs which have already been accomplished by private parties, our goal is to encourage and assist other building owners to deal with asbestos in their buildings. We plan to begin distribution of the first of these studies in early 1987.

Summary

In summary, I would like to observe that in many areas our activities and those you propose for schools or Federal buildings are equivalent. In many cases, EPA or other Federal Agencies have taken similar actions to those you advocate. I would hope that we can capitalize on these similarities, join forces, and keep up the momentum to achieve our mutual goal of reducing asbestos exposures nationwide. I thank you for your time and I would be happy to answer any questions you may have.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

July 14, 1986

Honorable Robert T. Stafford
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of June 5, 1986 requesting response to questions submitted for the hearing record on my testimony of May 15, 1986. I have answered each question individually on the attached pages.

Sincerely Yours,

Susan F Vogt
for John A. Moore
Assistant Administrator
for Pesticides
and Toxic Substances

Attachment

Questions from Senator Stafford

1. As you know, one of the primary purposes of S. 2083 is to avoid unnecessary and expensive asbestos removal by providing better standards to describe when removal is needed and, of course, when it is not. Do the cost estimates provided in your May 14 letter to Congressman Lent take into account the offsetting cost savings that should result from better standards?

In a May 14, 1986 letter to Congressman Lent, EPA estimated the total costs to schools to inspect, develop management plans, and abate asbestos according to the requirements of the legislation. In estimating these costs, EPA assumed that all asbestos would be removed from schools over a 15 year period as a result of the legislation, i.e., one-fifteenth of the remaining asbestos would be removed each year. The implied assumption in these calculations is that one-fifteenth of the remaining asbestos in schools will meet the "hazard standard" requiring removal under the proposed statute. Since EPA currently has no regulatory requirements to remove "hazardous" asbestos from schools, nor any data to estimate the future rate of removal absent regulation, we have no way of measuring cost savings resulting from setting standards for mandatory removal.

Q. 2. The EPA Manual "Guidance for Controlling Asbestos Containing Materials in Schools" contains the following statement on page 4-1:

"Air monitoring alone should not be used for assessment."

Would you please explain and elaborate on this statement? What is your response to persons who say that EPA should establish a quantitative ambient air "action level" below which asbestos abatement is not warranted?

.. EPA believes that air monitoring has an important role in asbestos abatement projects, specifically in assuring that asbestos fibers do not escape from the work-area and to acertain that an area is thoroughly cleaned following abatement. However, EPA does not recommend the use of air monitoring as the primary assessment tool for use in determining whether abatement is necessary for several reasons.

First, air monitoring provides information only on levels of airborne asbestos fibers at the time samples are collected, and cannot provide information on future problems in a building. EPA is most concerned witn peak exposures. These exposures occur as a result of activities such as custodial and maintenance tasks, vandalism, intense physical activity or roof leaks. Because air monitoring cannot be conducted on a continuous basis, it is impossible for peaks to be measured unless a peak is occurring during sampling.

Second, there are limitations in the methodologies that are available to analyze air monitoring data. Phase-contrast microscopy (PCM) is the method specified for compliance with the OSHA standard. However, PCM cannot distinguish asbestos from non-asbestos fibers or measure fibers with diameters less than 0.3 microns, or shorter than 5 microns. fibers. In buildings, fibers may be present which come from carpets, clothing, hair, paper, etc. In addition, fiber sizes outside of those listed above may be present. Therefore, PCM results may be misleading.

Other methods employing electron miscroscopy (EM) (specifically transmission electron micrscopy) can detect small and large fibers as well as differentiate between asbestos fibers and non-asbestos fibers. These procedures require several air samples per site. However, the number of samples needed to detect peak and prevelant airborne levels, the high cost of EM analysis (about $500 per sample), and the shortage of qualified laboratories, make it difficult for EPA to recommend EM for routine sampling.

In summary, for all of the technical and economic reasons discussed above, EPA does not recommend air monitoring data as the only information a building owner uses to determine whether abatement is required. In publishing EPA's latest document entitled "Guidance for Controlling Asbestos-Containing Materials in Buildings," EPA recognized that some building owners would continue to collect air monitoring data. EPA was concerned that building owners would rely on this data as the sole criterion for taking abatement action. Therefore, the document emphasizes the need for a physical evaluation in a building to determine whether abatement action is needed.

Questions from Senator Burdick

Q. 1. Do you feel the Agency's current programs and laws for identifying and controlling asbestos hazards in schools and other public buildings are adequate? If not, what is the Agency doing to solve some of these problems?

A. Since 1979, EPA has operated a comprehensive National Asbestos Technical Assistance Program. The program is designed to assist schools and other building owners in identifying and controlling asbestos in their buildings. Through this program, EPA has published state-of-the-art guidance documents and responds to thousands of requests for technical assistance from all types of building owners. In addition, EPA has established five information and training centers at Universities which have provided a variety of courses for persons who are involved in the identification and control of asbestos-in-buildings.

Several existing regulations affect schools and other building owners regarding asbestos:

° The Asbestos in Schools Rule issued under the Toxic Substances Control Act, was published in 1982. This rule requires schools to inspect for friable asbestos-containing materials, and if found, to meet certain recordkeeping and notification requirements. EPA has recently announced its intent to issue an advanced notice of proposed rulemaking to solicit views on the need to revise this rule as well as expand the technical assistance program.

° Separate regulations under the Clean Air Act require that all friable asbestos be removed before a building is demolished or renovated. Certain work practices, as well as notification and disposal requirements are included in the regulations. EPA is currently revising this rule.

° The Occupational Safety and Health Administration (OSHA) has had an asbestos standard since 1982 which applies to all private sector workplaces. OSHA recently promulgated a new standard with a lower permissible exposure level for airborne asbestos. The new OSHA standard also includes a training requirement. In 1984, EPA effectively extended the old OSHA rule to state and local public employees who take part in asbestos abatement projects but who are not covered under the OSHA rule. EPA intends to amend its rule to make it consistent with the new OSHA standard.

In summary, EPA believes that the combination of existing regulations along with a vigorous national Technical Assistance Program are an effective way to reduce exposure to asbestos. During the past two years, EPA has greatly increased its technical assistance program. EPA continues to evaluate the need for further revisions programs and will make changes as necessary.

Q. 2. What is the average cost for an asbestos inspection and who normally pays the cost?

A. Because buildings vary in size and configuration, it is difficult to determine what the average cost is for a typical building inspection. This is especially the case for public and commercial buildings which can range from a small retail store (500 square feet) to a multi-story building with several hundred thousand square feet. EPA has calculated $ 1,300 as an average cost for inspection, sampling, analysis, and report writing for schools which inspect for and find friable asbestos-containing materials. If friable materials are not present, then sampling and analysis would not be necessary, so the average cost would be approximately $700. The cost to inspect, sample and analyze for all asbestos containing materials (both friable and non-friable) in a school would be approximately $2,000. School districts and building owners generally pay for the costs of inspection.

Q. 3. What is the average cost for each of the various abatement techniques available to control friable asbestos, for example enclosure, encapsulation, and removal? Who pays the costs associated with these activities?

A. EPA has estimated the costs of abatement of asbestos-containing material to be $2-15 per square foot. For any given size project, the costs of enclosure and encapsulation are significantly less than the costs of removal. For example, the cost of removal in a 6,000 square foot project in Texas is estimated to be $12.29 per square foot. The cost of encapsulation would be $4.74 per square foot and enclosure would be $7.40 per square foot. The average cost of a project funded under the Asbestos School Hazard Abatement Act in FY' 85 was $ 108,000. Building owners pay the costs associated with asbestos abatement.

4. Is it true that EPA requires building owners to file for a demolition permit? If so, what information is required for such a permit and what has been the compliance record of building owners with this regulation?

A. Under the Clean Air Act, EPA requires building owners to notify EPA at least ten days before a building that contains friable asbestos-containing materials is demolished. EPA requires building owners to submit the following information:

- Name and address of owner or operator;
- Description of the facility being demolished;
- Estimate of the amount of friable asbestos material present;
- Location of the facility being demolished;
- Scheduled starting and completion dates;
- Description of demolition methods to be used; and
- Name and location of disposal site.

The compliance record of building owners with this regulation has been low. However, EPA has substantially increased enforcement of these provisions and has taken several steps to improve compliance. First, EPA is revising these regulations to make them more enforceable. Second, EPA is evaluating state and local enforcement programs to determine whether some elements in these current programs can serve as models for EPA to distribute to other states.

5. In the past, what has been the compliance record of schools with the inspection and notification rule? What do you think are the reasons for this non-compliance?

A. The 1982 Asbestos-in-Schools rule has had an overall violation rate of approximately 64%. EPA believes the major reasons for this violation rate are that schools have been reticent to notify parents, teachers, and employees that asbestos is present in buildings and that schools have been reluctant to sample friable material. In addition, schools have been concerned that complying with the rule may force them eventually into conducting costly abatement projects.

Through EPA's guidance and technical assistance program, we have attempted to help schools and other building owners understand that asbestos-containing material can be left in place and managed if it is in good condition and has no potential for disturbance. EPA believes its guidance materials and technical assistance program have helped reduce overreaction to the presence of asbestos-in-schools. EPA data indicate that the Asbestos-in-Schools violation rate has decreased 30% since the first year that data were collected.

6. Do the EPA rules prescribe any analytical techniques to be used during inspections? If so, what are they and what are their standards?

A. Under the 1982 Asbestos-in-Schools Identification Rule, EPA requires the collection of 3 samples per homogeneous sampling area in school buildings. Polarized light microscopy is the required method under this rule to identify the presence of asbestos using established protocols. Under the rule, material is considered to contain asbestos if any one of the three samples contains at least 1% asbestos.

7. Do you believe that school officials act promptly enough after identifying hazardous asbestos? If not, what sort of timefame should be established to ensure timely abatement action?

In general, EPA believes schools should abate asbestos in poor condition as soon as possible. However, EPA has no specific information concerning the timeframe within which schools actually do take action. In many cases abatement decisions are affected by a variety of local factors such as future building use and the ability to pass bond issues. EPA believes that it would be difficult to mandate a timeframe that could take into account all of these conditions.

8. EPA estimates that about 760,000 school and public buildings contain friable asbestos. Is EPA doing anything to require these buildings owners to prevent or clean up their asbestos hazard?

EPA's technical assistance program, discussed previously, provides technical information to all types of building owners. EPA also sponsors training courses at five University information and training centers which provide information for all building owners on methods to identify and control asbestos-in-buildings. A variety of non-school building owners have attended these centers and asked for assistance through the technical assistance program.

In addition, EPA is working with several Federal government Agencies (General Services Administration, U.S. Postal Service, Veterans Administration, and Department of Defense) to encourage them to inspect and abate asbestos in their buildings. EPA believes programs at these Agencies will serve as models for other building owners.

Q. 9. Where does EPA draw the line between hazardous and non-hazardous asbestos? In other words, at what point should asbestos be properly abated?

A. As outlined in EPA's guidance entitled "Guidance for Controlling Asbestos-Containing Materials in Buildings," buildings must be evaluated on a case-by-case basis to determine whether abatement is warranted. In this document (see pp. 4-7), EPA recommends that asbestos that is in good condition, with little potential for disturbance may be left in place and safely managed under a good operations and maintenance program. However, EPA recommends that asbestos that is in poor condition and has potential for disturbance should be abated as soon as possible.

10. How many trained abatement contractors are available today? What kind of follow-up is being done to ensure the effectiveness of the training?

EPA estimates that between 200 and 300 trained contractors are available today to perform asbestos abatement projects. EPA is in the process of conducting a project which will evaluate whether trained contractors perform their work activities in a better way than untrained contractors. EPA plans to visit projects funded using FY 85 funds under the Asbestos School Hazard Abatement Act that are performed this summer. EPA will be comparing the source of training that the contractors received to determine whether training made a difference in the quality of the abatement project. We expect the results to be available this fall.

In addition, the new OSHA rule requires that all employees must be trained yearly. According to the new OSHA requirements, asbestos removal projects must be supervised by a person who has completed a course such as one conducted by an EPA Asbestos Training Center.

Under the Florio bill the maximum fine for penalties that can be imposed on schools is $5,000 vs. $25,000 included in S.2083. How do you feel about these fines?

The goal of EPA's compliance monitoring program for the current Asbestos-in-Schools rule is to bring schools into compliance with all elements of the rule. Our program is designed so that fines are levied based on a schedule that is adjusted according to the severity of a violation.

EPA believes that inspecting for and abating potential asbestos hazards in schools is the main purpose of the Florio and Stafford bills. If new legislation is enacted, penalties should be severe enough to encourage schools to comply with the legislative requirements. Based on EPA's experience with the current asbestos-in-schools rule, the lower the maximum penalty that EPA may assess, the less flexibility the Agency has in setting a schedule to permit a range of penalties depending on the severity of the violation.

STATEMENT OF

LLOYD A. KELLEY, JR.

SUPERINTENDENT OF SCHOOLS

RUTLAND PUBLIC SCHOOLS

RUTLAND, VERMONT

ON BEHALF OF

THE AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS

ON

S. 2083, THE ASBESTOS HAZARD EMERGENCY
RESPONSE ACT OF 1986

BEFORE THE

SUBCOMMITTEE ON TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

MAY 15, 1986

Mr. Chairman, members of the Committee on Environment and Public Works, thank you for the opportunity to appear before you and present the feelings of school superintendents in regard to S. 2083, a bill to amend the Toxic Substances Control Act, an act titled the "Asbestos Hazard Emergency Response Act of 1986." Superintendents are concerned for the safety and health of students, employees, parents and citizens who use our facilities. There is incontrovertable evidence that asbestos in the air can cause several different forms of lung cancer resulting in serious disability and death. The problem is of such a scope that Federal involvement is necessary. The "Asbestos Hazard Emergency Response Act of 1986" is a very positive step forward in responding to that need. It addresses many of the concerns that I commonly hear discussed by my colleagues.

The members of the Federal Policy and Legislation Committee of the American Association of School Administrators have adopted seven statements that represent their thinking in regard to inspection and abatement of asbestos in schools. They are as follows:

- AASA is pleased that the provisions of the bill would be administered by State governments rather than the EPA.
- While AASA does not agree with proposals to fine school districts in asbestos enforcement cases, we do endorse the suggestions that any fines levied against a district be turned back to that district to carry out inspection and abatement activities.
- AASA approves of the Asbestos School Hazard Abatement Act (ASHAA) authorization increases contained in the bill, and we agree with its provision to recirculate the ASHAA loan repayments into new ASHAA loans and grants.
- AASA feels that the bill should require that either the State or the EPA issue a final statement of compliance to those districts which fulfill the requirements of the bill.
- AASA is deeply concerned over the problem of insurability of asbestos inspection and abatement contractors.
- AASA remains concerned that legislation in this area may impose further mandates and provide no funds to carry them out.
- AASA would appreciate the opportunity of working with staff to further refine the bill to insure that whatever passes Congress is equitable and helpful to schools.

We are pleased that Senators Stafford, Mitchell, Lautenberg and Baucus have brought forward the bill under consideration here today and that we have this opportunity to amplify those positions taken by our group.

Our experience has been generally good in working with our State agencies in similar type programs such as the Occupation Safety and Health Act. The states are generally more knowledgeable about our schools and the communities which they serve. As long as a baseline of protection exists under the Federal legislation we feel that the States should be free to implement those standards or to establish higher levels of protection if they deem it appropriate. We are pleased that S.2083 permits placing the responsibility for the training and certification of laboratories and contractors with the States and permits the States to approve plans for abatement and post abatement management of asbestos hazards.

The bill should provide grant money for the States which opt to perform the duties prescribed. The costs associated with effective compliance and oversite by the States is significant. In a small State such as Vermont the cost of an Asbestos Health Hazard Control and Abatement Program over the next three years is estimated at $1,829,605 exclusive of those costs associated with removal or encapsulation. Included are all State buildings as well as school buildings within the State. (See "Proposal - Asbestos Health Hazard Control and Abatement Program," Agency of Human Services, Vermont Department of Health.)

We are opposed to the provisions of this bill which provide for fining of local educational agencies. Whether a system is large or small, whether the fines are greater or lesser, the fines take financial resources, which are in short supply, away from programs which benefit children. It is my understanding that under this bill the Environmental Protection Agency would still be able to impose administrative fines of up to $25,000 per day, such fines reverting to the Treasury of the Unites States. There should be a better way of insuring compliance by local districts. If not, at the very least these fines should be dedicated to the abatement of the problem which gave use to their imposition.

I have tried to obtain as much information as I can about asbestos and the extent of the problem which its presence creates. It seems to me that much remains to be learned. I would strongly encourage this committee to include language which provides for a study of asbestos hazards in schools, public and commercial buildings.

These are approximately 15,000 school districts in this country. Of these districts, 12,000 enroll two thousand or less students. In the district which I serve, Rutland, Vermont, we enroll about 3,000 students. I have tried to make some projections based upon our experience.

The present regulations providing for testing and posting would probably require $60,000,000 nationally. If identified material is repaired and/or covered it would take approximately $225,000,000. If the asbestos were abated through removal, it would require between 2 and 3 billion dollars. My estimates are based upon only the common sources around pipes, breeches or burners and coverings on boilers. If on gets into ceiling tile, floor tile, adhesives and other sources of asbestos the scope of the problem escalates geometrically.

Whether my rough calculations are anywhere near accurate or not is moot. The point I wish to make is that the appropriations contained in the "Asbestos Hazard Emergency Response Act" are minimal. The program is a combination of grants and loans. At least in my State the funds currently appropriated have not been fully expended. Frankly, the need is for grant money, not loan money. At the local level tax resources are being fully utilized. States have not rushed forward by and large to make funds available from that level to address this problem. My colleagues and I have been burned too often with expensive programs mandated at the State and Federal level where they become the very junior partner. We would ask you to provide the necessary funds to carry forward this program in some sort of a reasonable time frame for implementation.

If the program remains in part a loan program, we do applaud those provisions of the bill which provide that the loans will be repaid to the fund and the addition of $25,000,000 per year to the fund. The size of the problem would indicate the creation of a "super fund" for purposes of asbestos hazard abatement.

I am pleased to see that the bill addresses the issue of insurability for those responsible for removing asbestos containing materials. It is my understanding that the bill permits self-insurance pools to be formed by contractors. Exposure to risk and liability for damages must be addressed, not only for contractors but also for the school districts. The next round of law suits is likely to be against school districts as opposed to manufacturers. Settlements could well bankrupt school districts. It is as hard for us as for the contractors to obtain appropriate insurance protection.

I have tried to avoid the war stories of the problems which school districts have had with regulatory and administrative activities connected with current asbestos hazard control programs. However, I would like to mention one problem. The Environmental Protection Agency chose to use and rely heavily on public pressure to force public school boards to respond to their regulations. By premature and often false press releases to the media, the E.P.A. caused near panic among parents and teachers in many of our school systems. Out of that historical context we feel it appropriate that the law should require proper certification by the State or Environmental Protection Agency of compliance with the asbestos statutes, rules and regulations. There needs to be some abatement of the hysteria generated by past practice.

In our particular situation Damocles sword still hangs over our head. Several years ago we received a copy of a field report from an E.P.A. inspector recommending civil action be brought against our district. We feel we were never out of compliance. We reinspected all of our buildings. Every possible source of friable asbestos has been covered with a material recommended by the field inspector. A management plan is in place. The regional office has been fully informed of everything we have done and provided a copy of the inspection report. Yet, when we asked if we were now in compliance we received an unresponsive answer. I feel we deserved more. If one incites, one also has the obligation to restore confidence.

In establishing minimum standards for testing and inspection the bill wisely turns to an airborn criteria and defines friable in terms readily understood and easily applicable. It is my hope that the Environmental Protection Agency and/or the States will expand upon these in equally precise and understandable terms.

It is my understanding that electron microscopy is the best method of obtaining data about ambient concentrations of asbestos. In Vermont I am aware of only one such microscope. The State Health Department does not have one. Given the time frames outlined in the bill, laboratories may be hard pressed as schools meet the testing requirements.

The staff of our Federal Policy and Legislation Committee stands ready to work with the committee on refining the bill. We applaud the efforts of Senator Stafford and the other sponsors of this bill. We are sure that this committee will bring forward a bill that adequately protects our citizens from this insideous killer and yet responds to the realities faced by those of us responsible for the operation of our schools.

Response to Questions by Quentin N. Burdick
from Lloyd A. Kelley, Jr., Superintendent of Schools
Rutland, Vermont on behalf of the
American Association of School Administrators

Question 1. Which aspects of the asbestos problem are most difficult for school districts and what would you recommend to remedy some of the problems?

There has been some confusion in the past as to the definition of "friable" asbestos among responsible parties with the E.P.A., state health departments and consultants differing. The bill gives an easily understood and operational definition provided subsequent regulations do not muddy the waters. The asbestos becomes hazardous only when it becomes airborn although it is a hazard as long as it is present in the building. Much remains to be done in informing those who can make the decisions in regard to corrective action. In our typical small school district the key person is the Superintendent. School directors need to become aware of the seriousness of inaction. In larger systems there are usually people charged specifically with responsibility for buildings and grounds.

The emphasis until recently has been on enforcement. However, this seems to be changing. Just this past week our Chief of Buildings and Grounds attended a week long workshop sponsored by the Region I Environmental Protection Agency. For the first time we were given good information in a non-threatening and supportive setting. This is badly needed.

In general various state agencies, the American Association of School Administrators and the National School Boards Association are more effective in disseminating information. Grant programs or awards to the states and professional groups to provide technical assistance to school groups would enhance the implementation of corrective action programs.

Question 2. What are the primary reasons for non-compliance on the part of school districts with E.P.A. asbestos regulations?

The E.P.A. came in like gang busters and assumed school administrators were adversaries. As a result of the tactics used by E.P.A. school people got their hackles up. Little constructive technical assistance was available.

Now there is an increasing awareness of the seriousness of the problem. The biggest barrier to constructive action now is money. When school boards have increasing difficulty in getting budgets approved, expenditures for maintenance and school plant are the first to be deleted. Loan programs only defer the financial obligation.

Categorical programs mandated by the federal or state government should be fully funded. A realistic time frame for removal of asbestos hazards should be developed and a federal grant program be established to underwrite the costs.

As we move into programs of removing asbestos the availability of certified contractors will become a critical problem. This will rapidly escalate the costs of removal, thereby aggravating the problem of a shortage of financial resources. I have advised my district to move rapidly or the solution will become much more expensive.

Question 3. How do you feel about fines?

As you know from my previous testimony, we oppose fines as inappropriate. They only hamper the district being fined from meeting its obligation and do not do much by way of encouraging other districts to comply. Much more would be accomplished and more rapidly through financial inducements.

If the Congress feels fines are appropriate we prefer the Florio approach, whereby the fines will be returned to the district and dedicated to abatement activities.

Administrative fines do not enhance constructive working relationships.

Question 4. For schools that found hazardous asbestos, how did they decide what action to take? What was the most frequently chosen abatement action? Were the actions taken appropriate and were they performed adequately?

In checking with my colleagues I find that removal of the hazardous material was the most common response. The next most common response was encapsulation. Most districts now have in place some type of management plan.

Most districts used some type of resource in identifying the problem. The states were the primary source of assistance. Private engineering firms were used frequently but few have very extensive backgrounds in the area. The E.P.A.'s focus was on enforcement but they did provide some assistance.

Absent contractor training and certification - most abatement activities were poorly handled and some actually increased the hazard.

Most abatement activities focus on the most obvious sources of the hazardous material such as breeches and pipe laggings. The presence of fibrous asbestos is far more pervasive in school environments. Only now are we beginning to develop a better appreciation of the scope of the problems.

Question 5. How much do local school districts use consultants? Do they have a problem identifying qualified consultants? In what areas do school districts seek a consultant's advice? How many of them follow the consultant's recommendations?

The use of consultants is quite extensive. Few qualilfied consultants are available. Certification and the creation of a registry would be helpful. Most commonly advice is sought in identification. Advice on appropriate abatement is nearly as frequent. Within the constraints of financial resources, the advice of consultants is usually followed.

Thank you for this opportunity to amplify my previous testimony.

STATE OF VERMONT
AGENCY OF HUMAN SERVICES

DEPARTMENT OF HEALTH
60 MAIN STREET
P.O. BOX 70
BURLINGTON, VERMONT 05402

May 15, 1986

S.2083 Testimony

Testimony regarding S.2083, The Asbestos Hazard Emergency Response Act of 1986, submitted by Dr. Roberta R. Coffin, Commissioner of the Vermont Department of Health, Burlington, VT to the U.S. Senate subcommittee on Toxic substances and Environmental Oversite.

Mr. Chairman, members of the Subcommittee on Toxic Substances and Environmental Oversight, thank you for this opportunity to present the Vermont Department of Health's position on S.2083, the Asbestos Hazard Emergency Response Act of 1986.

The Vermont Department of Health strongly supports the current asbestos initiative and is in favor of the comprehensive, systematic approach to asbestos control which S.2083 provides. Asbestos is a well-documented human carcinogen and a serious public health problem. Asbestos exposure has caused asbestosis, lung cancer and mesothelioma, a cancer of the lining of the chest and lung or abdomen. Exposure to asbestos combined with cigarette smoking creates a synergistic effect which greatly increases the risk of developing lung cancer. Male asbestos workers who smoked had an incidence of lung cancer which was five times that of individuals who smoked but did not work with asbestos, ten times that of asbestos workers who did not smoke, and fifty-five times that of men who did not smoke and did not work with asbestos.

These debilitating and devastating asbestos related diseases have also been reported with both brief high level exposure and long term low level exposures. These low level reports were not occupationally related but due to household or environmental exposures. The latency period for the cancers is between 10 to 40 years after exposure. Due to the long latency period, the population at greatest risk is children who are exposed to airborne asbestos. Exposure time for school children could be six or seven hours a day for periods of twelve years.

Without the proper control measures, future generations of school children will continue to be exposed to unnecessary amounts of asbestos fibers as insulation, ceiling tiles, and other building materials succumb to "old age", vandalism, and water damage. Asbestos is a widespread problem. Asbestos-containing materials were found in 75 percent of 336 Vermont schools constructed or renovated between 1946 and 1974 (Asbestos in Vermont Schools: Findings of a Statewide On-Site Investigation, AJPH July 1981, Vol. 71, No. 7).

As a result of Vermont's school survey and the USEPA pressure on schools under the School Asbestos Health Hazard Abatement Act, and subsequent attempts at control measures, we have experienced many of the problems associated with uncontrolled asbestos abatement. Unqualified and incompetent abatement contractors have performed sloppy, hazardous work, endangering their workers and building occupants. OSHA permitted air levels are too high to protect against asbestos related cancers according to NIOSH and the USEPA. School districts have delayed abatement activities due to a lack of funds. Public outcry has caused bitter disputes in small towns over the urgency of abatement. One case in northern Vermont resulted in a group of concerned citizens filing a lawsuit against the School Board, superintendent, Department of Education and Department of Health seeking to close the school until the asbestos was removed. Although there was not an imminent health risk, the Vermont Department of Health recommended that the asbestos be removed due to the likelihood of intermittent exposure to asbestos fibers. The school board delayed removal primarily due to concerns about funding the project. The resulting dispute was a significant drain on the Town and the Vermont Department of Health's resources and caused much confusion about the United States Environmental Protection Agency's and the state's role in asbestos abatement.

The current USEPA school program does not solve the public health problems. It simply requires that all schools with friable asbestos notify employees and parents that a cancer causing substance is in their school. This creates a situation where communities with vocal, concerned parents or the financial resources undertake abatement instead of assessing the situation and proceeding with clean up of worst cases first.

Vermont is among approximately 10 states which have developed contractor certification and asbestos control programs. Vermont's program contains many provisions which are similar to those in S.2083. Nevertheless, federal action is needed to strengthen existing state programs and create some much needed uniformity between states in regard to standards, contractor certification and building inspections. These controls are imperative and applicable for all asbestos abatement activities in public buildings with the most urgent priority the work performed in schools.

Section 202 of S.2083 directly addresses the problems of the current USEPA program. It requires the EPA to promulgate regulations which would provide the guidance to properly decide how serious a problem exists, and how to properly solve it. These regulations are urgently needed. The requirement for EPA's abatement decision standards should prevent unnecessary abatement so that available funds can be used for the highest priority situations. This, along with operations and maintenance standards should provide a rational approach to asbestos control while also minimizing fiber release until abatement takes place.

Tests for asbestos in air provide information at one point in time but other inspection criteria may be more valid for setting asbestos abatement priorities. For example, the school which I mentioned earlier had badly damaged ceiling tiles and at our request had thoroughly cleaned the building. Stringent air sampling did not detect any asbestos fibers in the air at that time, but future damage to the ceiling could result in fiber release.

The Vermont Department of Health does not agree with the mandating of scanning electron microscope analysis of asbestos air samples. As with other analytical techniques, the best available technology should be used and the best microscope method will likely change in time. The USEPA should have the authority to make that determination.

I am very pleased to see that section 203 of S.2083 proposes that not only the abatement contractors, but all persons involved with asbestos evaluation and abatement will have to be accredited. One weak link in the chain of professionals involved with asbestos abatement can cause people to be unnecessarily exposed to asbestos fibers and create an increasing public health hazard where little previously existed. The requirement for accreditation exams and continuing education are critical aspects of the program.

The Vermont Department of Health is currently implementing a program for schools and state buildings which is very similar to section 206 of S.2083. Schools need to be reinspected because asbestos containing materials deteriorate over time which can significantly increase potential health risks. We feel that the use of operations and maintenance programs is a key element in cost effective asbestos control. Reinspection costs are significant and funding for this important future program must be available.

S.2083 also addresses the very important issue of liability insurance for asbestos contractors in section 210. If a solution to the problem, such as the proposed risk retention groups, is not found then abatement work may end. The result would be continued asbestos exposure and increased public health risks.

The amendment to section 512 of the Asbestos School Health Hazard Abatement Act of 1984 which establishes the Asbestos Abatement Trust Fund is a key portion of the bill. The current funding scheme of the 1984 Asbestos in Schools Hazard Abatement Act creates a situation where it is very difficult for schools to plan abatement because of the uncertainty of fund each fiscal year.

In conclusion, I feel that S.2083 will provide realistic solutions to many of the problems with asbestos control in our schools. Without comprehensive federal action states will have to continue to attempt to solve piecemeal what is truly a national problem.

Masterclean of N. C., Inc.
ASBESTOS SPECIALISTS — LICENSED GENERAL CONTRACTOR
*Removal * Containment * Encapsulation * Consulting * Training * Sale of Special Products*

May 15, 1986

TESTIMONY

PRESENTED TO: United States Senate
Sub-Committee on Toxic Substance and Environmental Oversight
Of the Committee on Environment and Public Works

SUBJECT: S2083 and S2300

PRESENTED BY: William B. Smith
President
Masterclean of North Carolina, Inc.
1175 Old Salisbury Rd.
Winston-Salem, North Carolina 27107

BACKGROUND OF WILLIAM B. SMITH:

1. Founder and president for eight years of Masterclean of North Carolina, Inc., a contracting firm specializing in asbestos abatement for the entire eight year period.
2. Past vice-president and current director of National Asbestos Council, a nationwide, information processing association with membership consisting of contractors, architects, engineers, hygienists, building owners, laboratories and others concerned with the asbestos abatement field.
3. Charter Member of National Association of Asbestos Abatement Contractors.
4. Associate Member of Asbestos Removal Contractors Association (London, England).
5. Founder and current president of Asbestos Abatement Association, Inc., an association of asbestos removal specialists, formed to manage the insurance and bonding problems which exist today.

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Masterclean of N. C., Inc.
ASBESTOS SPECIALISTS — LICENSED GENERAL CONTRACTOR
*Removal * Containment * Encapsulation * Consulting * Training * Sale of Special Products*

May 15, 1986

TESTIMONY:

I speak to you today as an Asbestos Abatement Contractor, in my eighth year of active asbestos abatement work. In this time I have personally examined literally hundreds of buildings and discussed the problems with an equal number of building owners and managers. In many cases, particularly in the schools, asbestos abatement work was actually undertaken and done. In many other cases the discussions led to no action or extremely limited action on the part of the building owners or managers.

My testimony represents my personal opinion, rather than any of the groups that I am associated with. However, I feel I know the feeling and desires of a great number of the contractors in business today as well, and my feeling would be typical of their commentary if they were in my shoes today.

I wholeheartedly support both senate bills number S2083 and S2300. Both bills specifically solve areas of public health not being properly handled today. The vast, vast majority of occupants in office and highrise buildings and other public buildings are either unaware of an asbestos exposure potential or are aware in a very minor fashion. The majority of building owners and managers are taking very limited action at this time, preferring to adopt a "wait and see" attitude. As a result, very little action is evidenced.

These two bills attack this issue, and force action to be taken towards protecting the health of these public servants and innocent people. They do so in a way which will cause the highest quality work to be done with the resulting lowest cost possible.

The main features of these bills include, as I see it, three major accomplishments, all of which are vital to an organized, sane, practical approach to a solution of a problem in public safety.

1. They force buildings not previously covered to be inspected and ultimately the asbestos removed or otherwise abated. If left alone, building owners and managers will react as in the past few years, to the legal pressures and pressure to obtain maximum occupancy in their buildings. It is only when pressure is put upon a building owner or manager that action seems to be taken.

This pressure currently is in the fear of either actual or potential legal action by a tenant or past tenant, and is basically a fear factor. The second factor causing action by a owner is pressure by a tenant or a group of tenants or a large enough percentage of tenants that the fear of lower occupancy overrides the expense of performing asbestos abatement work. Since the numbers involved are extremely large, the pressure to avoid such heavy expenditures is very large on a building manager, and it is absolutely one hundred percent contradictory to the investment desires of the building owner.

In the case of the federal government or other governments, there are additional budgetary limitations also emitting extreme pressures, all of which are exerted against the public health and safety factor.

These bills will place into law an organized, conscientious and practical method of addressing this problem of asbestos in buildings, eliminating the variety of decisions not to abate asbestos by offering a practical series of solutions over a period of time. With passage of these bills we will see positive action being taken, in a practical way.

2. The "Certification of Contractors" provision will insure high quality workmanship to solve the asbestos problem without creating additional problems,

In entirely too many cases in past years, the cheapest method was used to remove and abate asbestos. "Saturday Night Specials" have been performed too many times, and there are too many documented cases of piles of asbestos being left in the middle of the floor and windowsills, and asbestos airborne exposures in surrounding areas going up rather than down due to bad asbestos work.

In one particular building in which we were involved the asbestos contractor was fired after working five months and claiming a clean floor on the second floor. In this same area we removed five truck loads of additional asbestos material before clean air was actually obtained. A total of thirty days were spent by our company to completely obtain clean air in the entire building.

This immense delay and "almost" approved asbestos removal project would have caused serious health problems for future occupants, and all because a totally inexperienced contractor was selected on price alone.

There are many ways to write a certification program for contractors which would cause qualified contractors alone to be used in such asbestos abatement work. The program addressed in these bills allows the freedom to establish such a program without specifying exactly what must be done. The important point here is that some certification must be written and performed, rather than the exact specific certification of one type or another. In other words, any certification program would perform ninety-eight percent of what is necessary to insure satisfactory contractors in the asbestos abatement field. These bills address this issue quite well and quite necessarily and would do the job.

3. These bills address the cost factors indirectly in a very satisfactory manner.

A "panicky", "frantic", approach to asbestos removal would result in not only hazardous work being performed poorly, but a skyrocketing cost factor totally out of control. If approached reasonably, the cost of asbestos removal work can be merged with renovation and remodeling work and minimized considerably. These bills take this approach of a practical solution to the problem.

Obviously, the first step to be taken is identification and evaluation of the hazard. Sufficient time has been given in these bills to allow this to be accomplished in a very practical manner without forcing undue cost upon building owners.

Following identification of a hazard, the bills allow a solution to the problem, which can be spread out over a period of time, as long as it is managed in a satisfactory manner.

The most cost effective way to abate asbestos in an occupied building, is "one floor at a time". When tied to relocation of groups, or occupants or tenants of a specific building when an entire floor or most of a floor is being renovated anyway due to relocation of its occupants, this is the practical time to perform asbestos abatement work on that one floor in its entirety.

Since the cost of renovation is anticipated and built into the leasing program the only additional cost is the actual asbestos removal cost at that time.

The other costs which are generally forty to fifty percent of the total cost of an asbestos abatement project, would have been spent anyway on normal renovation work, such as painting, ceiling repairs, light fixtures replacements, new carpet, new wallpaper, etc.

These bills allow the building owners and managers the right to schedule the asbestos work in a cost effective manner. So long as the plan is followed, the asbestos will ultimately be abated, and the cost to the building owner and manager will be minimized as much as possible in a manageable amount.

From a level of professional asbestos abatement contractorship, I would submit that if these bills are passed, there will be an immediate surge of survey and inspection work, which will result over the coming years in a considerable increase in asbestos removal work, all of which, due to certification requirements, would have to be performed by qualified contractors. I would submit that there are sufficient contractors available today with satisfactory expansion possibilities, to handle the work that would be resulting, as proposed in a managed manner over a period of years.

As stated at the beginning of this testimony, I support the passage of both of the bills as written, and believe my opinion and support is representative of the majority of quality contractors in the United States today.

Respectfully Submitted,

William B. Smith

William B. Smith

Masterclean of N. C., Inc.
ASBESTOS SPECIALISTS — LICENSED GENERAL CONTRACTOR
*Removal * Containment * Encapsulation * Consulting * Training * Sale of Special Products*

Questions for the Record by Quentin N. Burdick

Mr. William B. Smith: Masterclean of N. C.

1. EPA requires building owners to file for a demolition permit, but compliance with this regulation has not been very good. What would you recommend to tighten this regulation and increase the rate of compliance?

2. What is the average cost for an asbestos inspection and who normally pays the cost?

3. What is the average cost for each of the various abatement techniques available to control hazardous asbestos, for example enclosure, encapsulation, and removal? Who pays the costs associated with these activities?

Answers:

1. Contractors who Demolish without proper notices are mostly trying to avoid the expense of removing Asbestos. My suggestion would be to punish violations, and violators, by fining the Owner/Contractor, whenever a violation is found, and make the fine heavily meaningfull, like $50,000 per occurance.

2. The owner pays the cost, which varies considerably, depending on number of buildings being surveyed, loacation, size; etc.- No "Average" figure comes to mind-perhaps a guess of $2,000 per building??

3. Enclosure.......$10/square foot
   Encapsulation... 3/ " "
   Removal .... 5/ " "

In all cases, the cost is born by the Building owner, sometimes reduced by court action against the supplier of the material, Johns Manville, Gold Bond, etc.

William B Smith
William B. Smith, President
7/3/86

THE AMERICAN INSTITUTE OF ARCHITECTS

STATEMENT OF

JOHN M. LAPING, AIA

ON BEHALF OF

THE AMERICAN INSTITUTE OF ARCHITECTS

BEFORE THE

TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT SUBCOMMITTEE

OF THE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE

OF THE

U.S. SENATE

MAY 15, 1986

1735 NEW YORK AVENUE, N.W. • WASHINGTON, D.C. 20006 • (202) 626-7300 • CABLE ADDRESS: AMINARCH • TELEX: 710822 1112

Mr. Chairman, members of the Subcommittee, my name is John M. Laping, AIA. I am a practicing architect for the Buffalo, New York firm of Kideney Smith Fitzgerald Laping Partnership and a member of the Board of Directors of The American Institute of Architects.

I appreciate this opportunity to share with you the AIA's concern regarding the asbestos hazard present in most of the buildings built in this country before 1972, and the bills being considered by you today to alleviate that hazard. The Environmental Protection Agency estimates that some 730,000 public and commercial buildings in this country contain asbestos, as do another 33,000 schools. This says nothing of the hundreds of thousands of private homes and apartments that contain asbestos. This dangerous material was used nationwide for decades, with millions of people potentially harmed, through ignorance of the carcinogenic nature of the stuff. Now we know. There is no longer any excuse for building owners to allow dangerous, friable asbestos to decay uncontained, or for it to be manipulated incorrectly during rehabilitation or maintenance. Mr. Chairman, Senators, we at the AIA commend you and the subcommittee for your concern and foresight you demonstrate in holding this important hearing and examining the asbestos abatement issue.

For architects, asbestos abatement is, in part, a professional liability issue. Asbestos abatement regularly comes up as part of the design considerations when renovating or rehabilitating existing buildings. In an ideal world, one without liability dilemmas, a coherent management plan and design team would be coordinated by the architect with training in each element involved, and the project could be finished in a complete, efficient manner.

This is not a perfect world. My firm recently renewed its liability insurance policy. We were not able to obtain a policy that contained coverage for any work that involved asbestos. The same exclusion faces design professionals all around the country. Each major carrier of insurance for design professionals has excluded--across the board--coverage for asbestos related work. The few insurance carriers which have recently begun to offer what they refer to as "coverage" for asbestos abatement work charge premiums in the range of $400,000 a year, for a limit of $1,000,000 for a claims made policy with no guarantee of renewal. For most design professionals, this is coverage in name only. Last year we had 15 insurance companies offering architects liability insurance; this year there are but two. We have learned that insurance coverage and companies come and go. So please, in your study of this issue, do not be misled by insurance vendors that promise to offer a protection that just does not in reality exist.

As you well know, insurance companies are avoiding anything to do with asbestos as a result of the Johns-Manville product liability cases. To them, asbestos abatement is an unpredictable business, both at the rehabilitation site and in the courts. To no small extent, this unpredictability results from one simple fact. There currently is no national standard of care for the removal and abatement of asbestos. Whatever you may say or we may say to persuade insurance companies of our competence in this area, they will not budge without standards on the manner in which asbestos should be abated.

Before Representative Florio's Subcommittee in the House, the AIA testified that one standard, accepted by the federal government, might make adequate insurance available once again in the asbestos abatement field. We have since asked the

Victor O. Schinnerer & Company, Inc., managers of CNA's Architect/Engineer professional liability insurance program, to examine that premise. I would ask your permission to submit its analysis for the hearing record. In the opinion of Paul L. Genecki, Senior Vice President at Schinnerer, "... the creation of such standards and their acceptance by the courts while adhering to traditional negligence standards to measure the performance of design professionals will vastly improve the likelihood of the availability of professional liability insurance for architects and engineers for services in connection with asbestos abatement." We submit, Senator, that without passage of this or similar legislation, adequate insurance will not become available for asbestos abatement.

The Asbestos Hazard Emergency Response Act and the Federal Building Asbestos Hazard Abatement Act are precisely the first steps needed in the ultimate elimination of the danger now so pervasively imposed by asbestos. The Environmental Protection Agency has been ducking its responsibility for some time on this, and its track-record does not suggest that this performance will improve of its own accord in the future. These bills would require them to face that responsibility.

The National Institute of Building Sciences is soon to release a very detailed set of guidelines on abatement procedures. Representatives of the EPA, the AIA, the Safe Buildings Alliance, various insurance groups and others have spent countless hours developing this guide. The AIA recommends that you require the EPA to adopt the NIBS guidelines as the federal standard of care within thirty days of enactment of S. 2300 or report back to the Subcommittee the flaws in the guideline and its proposals to rectify those flaws. Public safety demands this "hammer" solution. There is no reason for the EPA to spend 180 days spinning its wheels. By spelling out standards on how asbestos is to be abated, and by whom, and by giving those standards the force of law, be it statutory or administrative, the EPA could finally move ahead with effective enforcement procedures and eradicate the horrors now associated with improper abatement procedures.

Moreover, once these standards are in place, states can train and license people to implement those standards. People so trained and certified would then have a defense if they adhered to the standard. They would be able to say "Ladies and Gentlemen of the jury, that was the standard of care, and I followed it. I was not negligent." Predictability would be restored to the asbestos abatement industry, and the insurance industry could reenter a re-stabilized market. Reputable, qualified design firms would no longer have to put their practices on the line in order to fulfill professional obligations to their clients and the American public. And most importantly, with this defense in place, qualified personnel would once again be in charge of asbestos abatement.

S. 2300 and S. 2083 also call for the EPA to promulgate a standard for defining when asbestos is to be considered hazardous and therefore abated. The AIA believes that these bills put the responsibility for such a delineation precisely where it should be. We are aware that the EPA does not want this responsibility. They are not qualified, they say, to determine a "hazardous" level of asbestos fiber concentration. So they buck the issue down to the states, who buck it to the individual localities and school districts. No matter how inadequate EPA may allege it is to the task at hand, it is surely better able to address the issue than are individual school boards and town councils. The responsibility for the promulgation of these standards rests squarely with the EPA. If it promulgates very conservative procedures due to a dearth of information on the subject, so be it. But standards there must be, and the federal agency charged with protecting our environment is the appropriate source for them.

Finally, as important and as helpful as S. 2300 is, the cost recovery paragraph in section 210 presents a problem. The section proposes that the Administrator seek reimbursement from "any potentially responsible party" for the cost of abatement. Mr. Chairman asbestos was used so extensively up until the seventies that it now permeates our built environment. The Manville asbestos cases have been the courts since the early 1960's and have cost untold dollars in transaction costs. If section 210 were enacted as drafted, we would be creating over 700,000 individual cases that would need to be litigated. To try and assign responsibility for each application of asbestos would involve such substantial court and transaction costs that the courts would be tied up for decades. Apparently there were some people who knew the dangers involved with its use some time ago, but to the rest of the country, it was the miracle insulation against fire. Even government agencies required its use; each could be liable for suit under section 210. With all due respect, there must be a way other than litigation to finance the costs of asbestos abatement.

Mr. Chairman, members of the Subcommittee, thank you again for your efforts and for your leadership in holding these hearings. Asbestos abatement is an issue that effects millions of Americans and most of them do not even know it. The promulgation of specific federal standards for abatement procedures is absolutely crucial for the health and well-being of our nation's citizens to be be protected. I thank you for your time and look forward to answering any questions you may have.

THE AMERICAN INSTITUTE OF ARCHITECTS

June 27, 1986

The Honorable Quentin N. Burdick
U.S. Senate
511 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Burdick:

Thank you for your consideration of Senator Stafford's legislation regarding asbestos abatement. S. 2083 addresses an issue of central importance to the architecture profession and, due to the prevalence of asbestos in schools and other buildings, the country as a whole. The efforts of members of the Environment and Public Works Committee and of the Toxic Substances and Environmental Oversight Subcommittee in particular are greatly appreciated.

In response to your question, Senator Burdick, no, I do not feel that current federal efforts are adequately protecting the public from exposure to hazardous asbestos containing materials in schools and other buildings. There are no federal standards for when asbestos should be removed, and only inadequate guidance as to how it should be removed. Deaths that have resulted from asbestos installations are tragic, the result of our previous ignorance of the dangers. Now we know better. Asbestos is carcinogenic and the proven cause of many lung diseases. But still the exposures occur and the deaths result. The federal government, through Congress and the Environmental Protection Agency, must take steps to end the tremendous health hazards posed by asbestos.

Federal standards and federally required contractor certification would ensure that safe abatement procedures are understood and enforced. Furthermore, once those standards and certification programs are in place, the EPA will not need to do as much policing as they now suspect. An architect working on a project involving asbestos, for example, might be able to find adequate insurance coverage once the EPA has promulgated standards (see attached letter from Paul Genecki of Victor O. Schinnerer & Company, Inc., to Chairman Stafford). That coverage would be contingent, however, upon strict adherence to the prescribed rules. The architect will not need EPA's encouragement to realize that the standards and abatement certification stand between security and unending liability. The future of the architect's practice will depend upon adherence to the rules.

Chairman Florio introduced on June 24 HR 5073, The Asbestos Hazard Emergency Response Act of 1986. This new bill includes a section specifically relieving abatement contractors of liability when they adhere to the standards. This generally accepted standard of care will further increase the availability of insurance for asbestos abatement work by responsible contractors, including design professionals.

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Your second question, Senator, is not one that I as an architect feel qualified to address. Whether aggressive air sampling or accessibility and friability are the most appropriate means of defining "hazardous asbestos" is a question that must be answered by the medical and scientific communities.

Senator Burdick, this legislation is important to those involved in asbestos abatement for liability insurance reasons. It is important to the country as a whole for health and safety reasons. While S. 2083 applies only to schools, the standards if not the funding, might be extended to cover other buildings so that private abatements might be deemed safe and therefore insurable also.

Thank you again for your efforts and your interest. If there are any further questions I can answer for you I would be happy to oblige.

Sincerely,

John M. Laping, AIA
Director, New York

Enclosures

CC: Ronald B. Outen, Ph.D.

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Paul L. Genecki
Senior Vice President

May 12, 1986

Senator Robert T. Stafford, Chairman
Committee on Environment and Public Works
United State Senate
Dirksen Senate Office Building, Room 410
Washington, DC 20510

Re: Creation of Standards for Asbestos Abatement

Dear Mr. Chairman:

As insurance consellors to the American Institute of Architects, we have been asked by its President, John A. Busby, Jr., FAIA, to comment on the effect on the availability of professional liability insurance for architects of the enactment of a bill creating or mandating the creation of reasonable standards for asbestos abatement.

One of the primary reasons for the lack of insurance coverage for asbestos abatement activities is the absence of standards acceptable to the courts, and others, by which performance can be measured. The absence of recognized standards, coupled with the imposition of new and novel theories of liability by the courts, has made it impossible to quantify the risks associated with asbestos abatement. If risks cannot be measured, losses cannot be predicted and insurance premiums cannot be forecast.

It is my opinion that the creation of such standards and their acceptance by the courts while adhering to traditional negligence standards to measure the performance of design professionals will vastly improve the likelihood of the availability of professional liability insurance for architects and engineers for services in connection with asbestos abatement.

INSURANCE

Victor O. Schinnerer & Company, Inc. is the Program Administrator and Underwriting Manager for the professional liability insuance program commended for architects and engineers and other design professionals by the American Institute of Architects and the National Society of Professional Engineers. Our firm has served as the professional liability insurance counsellor to AIA and NSPE since 1957, and we presently are the principal underwriting manager in the United States for professional liability insurance for architects and engineers. Currently, more than 8,000 design professional firms are insured in our program.

Since the late 1940's, all professions in the United States have seen a substantial increase in the claims made against their members for professional liability or malpractice. Professional liability claims have become a serious professional and financial problem for all professions, irrespective of whether legal liability ultimately is imposed.

Within the professional liability arena, there are three categories of exposure, or types of claims, that confront professionals:

1. Personal injury including bodily injury and death.
2. Damage to tangible property.
3. Intangible financial losses, such as loss of property rental income, loss of mortgage committments, and losses occasioned by increases in interest attributable to delays.

For hospitals, doctors, dentists, and other health care providers, the professional liability exposure is almost entirely bodily injury or death and usually involves but a single claimant. Lawyers and accountants have a professional liability exposure that usually encompasses intangible financial loss, and with the exception of SEC related matters, most often involves a sole claimant. Architects and engineers, however, regularly are confronted with professional liability claims involving multiple parties and arising out of any of these three categories of exposure.

Claims against design professionals alleging losses in all three categories are not atypical. This is the major distinction in the professional liability exposure facing engineers and architects as contrasted to all other classes of professionals. It is a unique and very complex exposure. In fact, in claims against design professionals, the cost of the investigation and defense can equal or exceed the original design cost of a project.

To date, the professional liability problem for architects and engineers has been especially complex owing to the wide variety of sources from which claims can arise. There are many influences which affect the design professional's daily practice in this regard. Professional liability claims against architects and engineers can result from alleged negligence in the project design or in the preparation of the drawings and specifications. They can arise from services performed during the construction phase while acting as the owner's agent; or from allegedly improper specifications for traditional products used in a new way without adequate testing; or from the increasing scope of government regulations such as building codes or standards, constantly changing and ambiguous environmental laws that are subject to after-the-fact interpretation, and regulations related to occupational safety; or from the constraints imposed by time and money which result in demands for accelerated completion; or, finally, from the changing attitudes of the courts and society in regard to the accountability of professionals for the consequences of their acts.

One way the insurance industry measures this professional liability problem is to look at the frequency of claims. Measuring that frequency in terms of numbers of claims per 100 architecture or engineering firms per year, our records indicated that the frequency in 1960 was 12.5 claims per 100 firms insured in the program which we manage. By 1978, that frequency rate had risen to 36.3 claims per 100 insured firms, and to 44.8 in 1980. The rate has held at 44 since then. Put another way, the "risk" probability is that close to one-half of all design professional firms will experience a professional liability claim in 1985. A majority of claims are disposed of without the need for any indemnity payment by the insurance companies, but the services of defense attorneys and expert witnesses, and the time spent by a design professional to establish a successful defense, can be extremely costly. This cost is usually borne by the architect or engineer under his insurance policy deductible or out of pocket. As can be seen, this overwhelming increase in claim frequency is a particularly acute problem for design professionals.

The other major perameter used to measure professional liability is the severity of claims. This quantifies the cost of claims. (Freqency quantifies the number of claims.) Starting at the same point used above to measure claim frequency, 1960, the value of an average claim $5,481. This amount is derived by dividing the total incurred loss by the total number of paid claims. This amount is in excess of the insureds' deductibles and reflects only the insurance company's claim experience in the first $1,000,000 layer of insurance. By 1978, the average claim had reached $43,659. When all of the 1985 claims have been reported and resolved, the actuaries tell us that the average will exceed $160,000.

The cost of professional liability insurance to an architect or engineer, in addition to their obligation to pay substantial deductibles, is somewhere in the range of 4% to more than 15% of gross billings. The cost of professional liability insurance, after personnel or salary costs, is the highest expense item for many design professionals.

It is important to understand how archtiects' professional liabililty insurance policies are written to understand the impact on design professionals. These insurance policies are written on a "claims-made" basis --- i.e., the insurance must be in force when the claim is made, irrespective of when the professional services were performed. And, these policies contain substantial deductibles on a per claim basis, which apply to both indemnity payments made to a claimant and to the investigative and legal costs incurred in defending against the claim. In many cases, an architect who is absolved of liability must pay thousands of dollars just to establish the successful defense. Under the insurance program for which we serve as the underwriting manager, the current minimum per claim deductible is $2,000. The most commonly carried deductibles are in the $5,000 to $10,000 range and higher. Rather obviously, any firm that has even a single claim is faced with a substantial financial exposure irrespective of insurance coverage.

Professional liability insurance for design professionals is not now, nor at any time in the past has it been, widely available. Within the insurance industry, it is considered to be a specialty type of insurance, and a very volatile one at that. Today, professional liability insurance for design professionals is written only by a few insurance companies, one of which is Continental Casualty Company, the company for whom we underwrite. Not all of these companies will write coverage in all geographic areas and some limit the availability of their coverage to firms conducting certain types of practices. As well, it must be recognized that a basic tenet of insurance is an ability to spread the risk over a large number of insured units. The total number of design firms practicing in the United States is relatively small and those which would render asbestos abatement services is very small. Thus, the base across which the risks inherent in asbestos abatement can be spread is quite small indeed.

In all of this, as well, the public has a vital interest. There can be little doubt that members of the public as well as professionals'clients are directly benefited by architects and engineers having financial resources in the event of a professional liability claim. If a person is injured or damaged by a design professional's negligence, there can be no meaningful recovery in the absence of insurance or personal assets.

If professional liabililty insurance is not available at any price or if a professional has chosen not to purchase professional liability insurance because of the expense, or has insufficient resources to pay the deductible, the injured parties, rather than the professional, will suffer the financial burden.

Despite all of the adverse developments over the past 29 years, including changing standards of practice, constantly expanding judicial interpretations of duties owed, dramatic increases in claim frequency and severity, and vastly increased expectations on the part of design professionals' clients, the professional liability insurance program we manage has been continuously available on a nationwide basis since 1957. Even today, we are confident that the professional liability risks of architects and engineers can be managed successfully and that professional liability insurance availability can be maintained to cover the vast majority of those risks. However, what cannot be managed is the uncertainty of underwriting results occasioned by liability that would be vastly expanded, at some point in the future, under new and unpredictable theories of law or by unforeseeable court decisions and awards resulting from the absence of standards by which performance can be judged.

In summary, it seems clear to us that the continued absence of standards for asbestos abatement will dictate the continued unavailability of professional liabililty insurance for this activity. On the other hand, it is our conclusion that if reasonable, universal standards are created and are accepted by the courts, and provided that traditional theories of negligence are not expanded, it will substantially hasten the time when professional liabililty insurance will again be available to architects and engineers who perform asbestos abatement services.

We appreciate this opportunity to present our views. We would welcome the opportunity to further discuss this matter with the Committee and its staff.

Very truly yours,

Paul L. Genecki

Paul L. Genecki

PLG:sgh
cc: John A. Busby, Jr., FAIA

STATEMENT FOR THE RECORD

OF

MARY L. WALKER

ASSISTANT SECRETARY FOR ENVIRONMENT, SAFETY AND HEALTH

BEFORE THE

SUBCOMMITTEE ON TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

U.S. SENATE

MAY 15, 1986

Mr. Chairman, I appreciate very much this opportunity to submit testimony concerning this very important and complex issue.

The Department of Energy operates a very large Government-owned contractor-operated research, development and production complex. Many DOE owned facilities were built in the 1940s, 1950s and 1960s when asbestos was a common building material. Because these are industrial facilities, they require frequent maintenance and are subject to periodic remodeling as operations change. The most common source of potential asbestos exposure in the DOE system comes from work on asbestos pipe insulation. This work is done by craft workers who remodel and maintain utilities. They are trained workers who are monitored by operating contractor's occupational health staffs to assure compliance with DOE prescribed requirements of OSHA worker protection standards (29 CFR 1910.1001).

Friable, sprayed-on, asbestos insulation is not common in DOE facilities although there have been a few cases where corrective actions have had to be taken to prevent insulation in accessible areas from flaking off and creating dust. In general, the presence of bound asbestos is not considered hazardous as long as it is left undisturbed. Since removal generates dust, we consider it safer to leave bound asbestos in place until a major remodeling or decommissioning project occurs. There are substitutes for asbestos insulation and construction materials so that it has been possible to virtually eliminate the use of any new asbestos containing materials.

Although the Department of Energy certainly concurs with the intent of this bill to eliminate any unnecessary exposure to asbestos, we oppose the bill for two reasons. First, the Department already requires its operating contractors to have environment, safety, and health staffs and programs. Through an appraisal process, we assure that DOE operating contractors have asbestos inspection programs in place as necessary prerequisites to comply with DOE prescribed OSHA worker protection standards and EPA demolition and disposal standards.

Second, the Department's concern with the proposed legislation is that it could duplicate the OSHA standard 29 CFR 1910.1001 "Asbestos" because it is commercial building type legislation as applied to the industrial setting. We believe this issue should be addressed explicitly to assure that conflicting regulations are not promulgated on control of occupational exposure to asbestos.

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
THURSDAY, MAY 15, 1986

STATEMENT OF

JAMES G. MITCHELL

SENIOR ASSOCIATE DIRECTOR

GENERAL GOVERNMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON TOXIC SUBSTANCES AND

ENVIRONMENTAL OVERSIGHT

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ON THE

GENERAL SERVICES ADMINISTRATION'S

ASBESTOS ABATEMENT PROGRAM

Mr. Chairman and members of the Subcommittee:

We are pleased to appear before you to discuss the results of our review of GSA's asbestos abatement program. A draft of our report on the results was sent to GSA and the federal agencies involved in regulating asbestos yesterday and we will evaluate their comments on our findings before issuing our final report. Today I would like to discuss in general those findings and to offer several comments on the provisions of S.2300, the proposed legislation being discussed here today.

ASBESTOS IN BUILDINGS

Asbestos, a cancer producing mineral fiber, once was used in numerous building materials and is still used in some materials such as roofing and floor tiles. Asbestos can be harmful when its microscopic fibers are released into the air, inhaled, and trapped in the lungs. Asbestos in building materials is released in the air through normal building deterioration, impact from maintenance work or occupant activities, or disturbance of previously released asbestos from custodial activities such as dusting or vacuuming.

Soft or loosely bound asbestos-containing materials such as sprayed-on fireproofing can release asbestos fibers after a relatively minor disturbance to the material or even through normal deterioration. Therefore, the soft or loosely bound asbestos-containing materials, also called friable asbestos, are the highest concern in building environments.

According to the Environmental Protection Agency (EPA), asbestos abatement in buildings involves removal, containment, or the use of interim control (also called operations and maintenance plans). Complete removal of asbestos is the only permanent abatement method. EPA requires removal in some cases when buildings are either renovated or demolished.

Containment by either sealing or enclosing asbestos is a temporary alternative to removal. Interim control involves developing control procedures for a building, such as informing occupants and workers as to the presence of asbestos, conducting periodic surveys to see if conditions change, and establishing special maintenance and custodial procedures to limit the release of fibers.

FEDERAL ASBESTOS REGULATIONS

The Occupational Safety and Health Administration (OSHA) and EPA have issued regulations on asbestos control, but neither agency requires that asbestos in existing buildings be removed. Effective July 1, 1976, OSHA established a permissible exposure level of two fibers per cubic centimeter for any employee exposed to airborne concentrations of asbestos fibers. On April 10, 1984, OSHA stated its intent to lower the permissible exposure level to either .2 or .5 fibers per cubic centimeter, levels that OSHA believes are feasible to attain and measure. However, OSHA has not yet established a revised permissible exposure level.

OSHA requires the head of each federal agency to establish and maintain an effective and comprehensive occupational safety and health program, consistent with OSHA's standards.

Several EPA regulations, primarily in new construction applications, have been issued to limit people's exposure to asbestos. In 1973, EPA used the authority of the Clean Air Act to limit the use of sprayed-on asbestos-containing insulation in buildings. EPA amended this regulation in 1975 to ban asbestos-containing pipe wrapping. The Clean Air Act rule also regulates operations involving the demolition or renovation of buildings containing friable asbestos and the disposal of wastes generated by such operations.

On January 23, 1986, EPA announced a proposed rule under authority of the Toxic Substances Control Act to ban the importation, manufacture, and processing of asbestos roofing and flooring felts, felt-backed sheet flooring, vinyl-asbestos floor tile, asbestos cement pipe and fittings, and clothing and to phase-out all remaining uses of asbestos over the next 10 years. The proposal would require any product not banned to be labeled as containing asbestos.

GSA ADOPTED EPA'S GUIDANCE

Although EPA regulations did not require GSA to establish an asbestos abatement program for public buildings, the Commissioner of GSA's Public Buildings Service did so in 1980. His memorandum of March 12, 1980, to all GSA regional administrators required each region to establish an asbestos control program which included

--not allowing friable asbestos material in GSA buildings unless enclosed or sealed,

- --either removing, enclosing, or sealing all friable asbestos in existing GSA-owned buildings,
- --performing maintenance, repair, or construction work involving friable asbestos in accordance with GSA, EPA, and OSHA guidance,
- --naming an asbestos control officer,
- --making exposure assessments for all GSA-owned buildings, and
- --entering asbestos control projects into a tracking system for repair and alterations and completing them on a worst-case-first basis.

On November 18, 1980, the Commissioner expanded the program to leased space and required that leased buildings be assessed.

OUR REVIEW OF GSA'S ABATEMENT PROGRAM

We looked into GSA's management of its asbestos abatement program to try to determine whether GSA has an efficient and effective program to protect its tenants from asbestos in GSA-controlled building space. We were interested in determining whether GSA has (1) inspected all its owned and leased building space to determine the extent of its asbestos problems, (2) costed the needed asbestos abatement work, (3) prioritized the work so that the most hazardous is performed first, (4) carried out appropriate operations and maintenance control in buildings where asbestos has not been removed, and (5) established appropriate policies and procedures for monitoring contractors' actions in removing or containing asbestos.

As part of our review of GSA's asbestos abatement program, we interviewed numerous federal officials--in GSA, EPA, OSHA, the

National Institute of Occupational Safety and Health (NIOSH), and various agencies who are tenants in GSA-controlled building space. We also interviewed various officials in non-federal governmental and private sector organizations about their building asbestos abatement programs. While our selection of these non-federal organizations was not statistically valid for projections, we found that GSA is further along in implementing an asbestos abatement program than many, if not most, of the non-federal organizations we interviewed. GSA has had its program underway for 6 years.

PROBLEMS IN GSA'S PROGRAM

While GSA's asbestos abatement program has been in existence for 6 years, GSA still has not inspected all its owned and leased space to determine whether asbestos is present and what abatement actions are needed. In the four GSA regions we visited, about 95 percent of the owned buildings had been inspected but only about 15 percent of the leased space had been inspected.

In 1980 GSA started requiring lessors, for new leases only, to certify that their buildings did not contain friable asbestos-containing materials. GSA informed us, however, that some lessors may not have the expertise to make this determination, GSA has no way of knowing if lessors are qualified to determine whether their buildings contain asbestos, and some lessors may not admit that their buildings contain asbestos.

We also found that past GSA inspections for asbestos were not conducted uniformly, may not have been reliable, and were not always informative because:

--some were performed by untrained personnel, such as maintenance workers,

--many GSA assessments we reviewed did not specify if an entire building was inspected,

--some assessments were made by GSA without laboratory analysis of samples taken, and

--inspection reports with negative findings were not always documented.

Consequently, GSA is not aware of the total magnitude of its asbestos problems. In September 1985, GSA began to resurvey its owned space and selected leased buildings. This resurvey is expected to be completed by August 31, 1986.

Total Program Cost Unknown

GSA testified in 1984 and again in 1985 that about $200 million would be needed over the next 5 years to abate asbestos in federal buildings, primarily in 45 priority buildings. However, GSA has not estimated what its total asbestos abatement program will cost or how long it will take. There are several reasons why GSA cannot estimate total program costs at this time. As previously mentioned, inspections of all buildings space have not been performed, cost estimates for known work are incomplete, and some needed work will not be discovered until building repairs are underway. GSA central office officials told us that the total cost to abate asbestos in all GSA-owned and leased buildings could range between $1 billion and $2 billion and that GSA will be doing asbestos abatement projects in the next century.

Further, GSA has not established a system for prioritizing all asbestos abatement projects, even though the program will take many years and resources are not unlimited.

GSA has recently started to take certain actions to improve direction and clarification of guidance and to obtain more complete information on asbestos in its buildings. These actions include resurveying GSA-owned buildings and selected leased buildings, revising guidance to the regions for managing the abatement program, implementing an education and training program for GSA maintenance personnel, and developing a new tracking system for managing asbestos work.

Controlling Identified Asbestos

According to EPA, if asbestos-containing materials are found in a building, an operations and maintenance plan should be implemented as soon as possible. An operations and maintenance plan, also called interim control, is designed to clean up asbestos fibers previously released, prevent future release by minimizing disturbance, and monitor the asbestos-containing materials.

Removing asbestos may cause large-scale fiber release if proper procedures are not followed and, as a result, airborne asbestos levels in the building may increase during asbestos removal rather than decrease. Therefore, regular on-site inspections are needed during abatement work to assure conformance with work specifications and to avoid hazardous errors.

We selected 23 buildings in four GSA regions that were known to contain asbestos to determine whether they had operations and maintenance plans. There were no plans for 9 buildings. There were plans for 14 buildings but they were not as complete as they should have been according to EPA guidelines. The limited testing we performed indicated that GSA did not always adhere to the EPA-recommended controls for these buildings. We found examples of inadequate training of regional maintenance and custodial workers, GSA's not having informed building occupants about the presence of asbestos-containing materials, custodial workers not using special cleaning procedures, regional personnel not following special asbestos safety procedures such as posting warning signs at exposed asbestos, and GSA personnel not periodically reinspecting asbestos-containing materials.

We also found that GSA's central office had not provided guidance to the regions on how often they should monitor abatement contractors, what their inspection reports should contain, or who should perform inspections. As a result, monitoring of asbestos abatement work was not performed uniformly at the regions we visited and in some cases not as often as recommended by EPA.

UNIFORM FEDERAL GUIDELINES NEEDED

The three agencies involved in providing guidance on asbestos in buildings--EPA, OSHA, and NIOSH--sometimes have different recommendations. Differences in guidance can cause credibility problems for building owners such as GSA, when owners follow one set of guidelines and tenants believe another should be followed. The three agencies have issued inconsistent guidelines for two critical standards for asbestos abatement programs--allowable asbestos concentrations in the air and air sampling and analysis methods.

EPA, for example, suggests that the potential for fiber release, not air monitoring, is the primary consideration when evaluating buildings with asbestos. OSHA and NIOSH, on the other hand, include air monitoring as a primary indicator of required action. However, OSHA's allowable concentration of fibers is 200 times greater than the level NIOSH recommends as an action level.

According to a GSA central office official, the lack of clear signals from EPA, OSHA, and NIOSH causes problems in dealing with tenants. This official cited the example of the fiber concentration in the air which would indicate a need to take action to reduce asbestos. GSA is required to adhere to the OSHA regulations which permit 2 fibers per cubic centimeter in the workplace. Tenants in two GSA-owned buildings have, according to GSA, received copies of NIOSH health hazard evaluation reports which recommended that air readings of greater than .01 fibers per cubic centimeter should signal a need to take action to reduce the concentration. Although the NIOSH recommendations are not regulations, some tenants interpret them as being so, according to this GSA official. He also added that since GSA is not viewed as a health expert, GSA has little defense for its policies when they differ from the recommendations of national health experts.

Another example of the differences in guidance between the agencies involved in regulating asbestos is the recommendations for analyzing air samples. OSHA specifies that air samples taken in the workplace be analyzed using phase contrast microscopy. EPA does not recommend that air sampling be used as an assessment tool, except for testing after an asbestos abatement project has been completed. However, EPA recommends that for this analysis, experts use the transmission electron microscope, which is more powerful than phase contrast microscopy. NIOSH recommends using phase contrast microscopy for analysis of air samples, followed by the transmission electron microscope for positive readings obtained with phase contrast microscopy.

GSA, citing the potential for confusion and lack of coordination between the implied authority of EPA, the regulatory authority of OSHA, and the advisory authority of NIOSH, in September 1984 asked the Office of Management and Budget (OMB) for assistance in bringing the regulatory community together and obtaining a consistent and uniform policy and regulatory guidance with regard to asbestos abatement and control. In a November 1984 response to GSA, the Deputy Director of OMB stated that

--he agreed a uniform and consistent policy concerning control of asbestos in federal buildings was needed;

--a meeting held at GSA in early October with all relevant agencies, in addition to OMB's review of testimony, successfully achieved a coordinated executive branch response to this issue; and

--OMB will continue to monitor and help coordinate federal activities in this area through its ongoing review of testimony and regulations.

Despite these statements by OMB, the inconsistent guidelines for allowable asbestos concentrations in the air and air sampling and analysis methods still exist.

COMMENTS ON S. 2300

We believe that S. 2300, the bill being considered here today, includes provisions that could assist in improving GSA's asbestos abatement program.

--Sections 204 and 205 would help assure that trained personnel conduct asbestos inspections, which should also result in more uniform inspections.

--Sections 204 and 208 would require that operations and maintenance plans be developed for buildings with asbestos, while section 211 would provide pressure to see that they are followed once developed.

--Depending upon the schedule of inspections that would be issued under section 206, there would be a requirement that eventually all GSA buildings be inspected for asbestos.

--Section 208 would require that management or action plans be developed for each building with asbestos and might also result in owners having many buildings, such as GSA, developing asbestos prioritization systems.

--Section 209 would require that any building GSA proposed to lease to be first inspected for asbestos.

The Subcommittee may also want to consider expanding section 204 (a) (2) to address the air concentration of asbestos that should be considered hazardous and to designate the microscopic analysis method that should be used to measure air concentrations for that determination.

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Mr. Chairman, this concludes my prepared statement. We will be happy to respond to any questions you or other members of the Subcommittee may have at this time.

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT DIVISION

June 13, 1986

Ronald B. Outen, Ph.D.
Professional Staff Member
Committee on Environment
and Public Works
United States Senate

Dear Dr. Outen:

As you requested by letter dated June 5, 1986, I am forwarding my responses to the two questions related to my testimony submitted for the May 15, 1986, hearing on S. 2083 and S. 2300.

Sincerely yours,

James G. Mitchell
James G. Mitchell
Senior Associate Director

Enclosure

1. Why did GAO choose to undertake a study of GSA's asbestos abatement program? What additional work is GAO planning to do in this area?

Response:

1. GAO reviewed GSA's asbestos abatement program because of the (1) potential health hazard of asbestos to the more than 800,000 federal employees located in GSA-controlled building space and (2) high estimated costs of abating asbestos.

GAO currently has no additional work planned in the asbestos abatement area other than to follow-up on actions taken by GSA and the Office of Management and Budget to respond to GAO's recommendations contained in a draft report now with various federal agencies for review and comments.

2. What, in your judgment, is most responsible for the problems in GSA's asbestos inspection and abatement work which you have identified?

Response:

2. We attribute the problems in GSA's asbestos abatement program to:

--GSA's Central Office not adequately monitoring and overseeing GSA's regions' implementation of GSA policies on asbestos abatement;

--a lack of GSA policies in some areas, such as prioritizing work, requiring action plans, communicating with tenants, and monitoring abatement contractors;

--the lack of adequate resources; and

--a lack of uniform federal guidance on how to measure the amount of asbestos in the air in federal buildings and how to define the amount of asbestos concentrations in building air that is allowable.

OPENING STATEMENT

HONORABLE TERENCE C. GOLDEN
ADMINISTRATOR OF GENERAL SERVICES
BEFORE THE
SUBCOMMITTEE ON TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U.S. SENATE

MAY 15, 1986

I am pleased to testify today concerning S. 2300, a bill directing the Environmental Protection Agency (EPA) to establish standards, schedules, and procedures for the abatement of asbestos in Federal buildings and other buildings that are accessible to the public. Because the legislation focuses on EPA, we defer to the views of that Agency.

As this Committee is aware, the General Services Administration (GSA) is responsible for the management of Federal buildings, including providing for the health and safety of Federal workers in those facilities.

When I assumed responsibilities as Administrator last summer, I set as a high priority the development of specific goals for the Agency. We determined that one of the major priorities of the General Services Administration should be to deal with critical health and safety issues in Federal facilities. Accordingly, GSA has developed, and is implementing, a vigorous program to: (1) replace all PCB transformers over the next five years, as required by the Environmental Protection Agency (EPA); (2) carry out an enhanced asbestos abatement program, including completion of asbestos removal in 45 high priority buildings, consistent with the regulations and guidance issued by the Occupational, Safety, and Health Administration (OSHA) and EPA; (3) address various fire safety deficiencies; and (4) issue and implement a revised smoking policy which will restrict smoking to designated areas in Federal facilities. There is no priority for this Agency greater than the health and safety of Federal workers and the public who visit our facilities.

The asbestos abatement policy of the General Services Administration is to eliminate the health hazards associated with asbestos in Federal facilities under our responsibility. We will comply fully with the regulations and guidelines issued by OSHA and EPA.

S. 2300 requires that EPA issue regulations in this area. Currently, there is no specific EPA regulation requiring that the General Services Administration test buildings for asbestos containing material and take abatement action when required. EPA has published considerable guidance in this area.

It is GSA's policy to follow the guidelines issued by the Environmental Protection Agency. These guidelines recommend surveying facilities to determine if asbestos is present, establishing special operations and maintenance procedures related to cleaning techniques and various precautions, assessing situations where asbestos containing materials are present to determine the need for further action and what abatement procedures should be used, and conducting appropriate abatement actions. In cases where friable asbestos is found, the appropriate actions include removal, enclosure, encapsulation, and monitoring.

The regulations issued by the Occupational, Safety, and Health Administration address worker protection. They specify airborne exposure standards for asbestos workers, engineering and administrative controls, workplace practices, and medical surveillance and worker protection requirements. These regulations apply to all workplace activities involving asbestos, including the removal of asbestos containing materials from buildings.

As part of its asbestos program, GSA surveyed all owned facilities in 1980 and 1981. In light of the EPA guidance published last June, as well as our specific goals to deal with the health and safety of workers, we decided to resurvey all owned facilities, as well as survey leased space. This new survey will be completed by the end of August, 1986.

To date, as a result of the earlier surveys, we have identified 45 priority facilities with potentially hazardous (friable) asbestos containing materials. Of those facilities, we have completed appropriate abatement actions in 22 of them. We are in the process of carrying out abatement actions in 18 other facilities. In many of these 18 facilities, significant repair and renovation work is required. Finally, we are resurveying five facilities in light of the guidelines issued by EPA last June.

For Fiscal Year 1987, the budget for major repairs and alterations contains $27 million for asbestos abatement projects. Generally, our major repair and alteration projects related to asbestos are being designed in Fiscal Years 1986 and 1987, with actual work to be conducted in Fiscal Years 1987, 1988, and 1989. In addition, approximately $11 million of the Fiscal Year 1987 budget for minor repairs and alterations is related to asbestos.

With respect to our leased facilities, GSA will avoid acquiring new leased space with asbestos containing surfacing materials wherever possible. If circumstances dictate that the Agency acquire leased space containing such materials, then those in a friable condition will be removed, encapsulated, or enclosed at lessor expense prior to occupancy. Other non-friable asbestos containing materials may be present if they are in good condition and the EPA guidelines are met.

For existing leased space, inspections are being made to identify asbestos containing materials. We require certifications from lessors to indicate that asbestos containing materials are not present. If friable conditions are found, the asbestos containing materials will be removed, encapsulated, or enclosed at the owner's expense. If this is not possible, an expeditious relocation will be pursued.

It is also our policy that no supplemental lease, extension, or succeeding lease will be executed for space with friable materials unless they are abated appropriately.

Our asbestos policy also extends to supply operations and the disposal of property. Distribution facilities will not receive, store, or ship asbestos containing products. No asbestos containing products will be procured except for special order products in a non-friable condition or those where no acceptable substitute exists. The transfer or disposal of excess or surplus property containing asbestos will be restricted to those in a non-friable form.

It is our policy to reject any property from a holding agency which does not comply with existing regulations and guidelines. Asbestos in the national defense stockpile of critical and strategic materials will be enclosed or encapsulated. Further, the handling, labelling, storage, and shipment of asbestos will be conducted in accordance with all applicable regulations.

Comments Concerning S. 2300

Concerning the specific legislation under consideration, the General Services Administration defers to the views of the Environmental Protection Agency. GSA's existing program is supportive of the basic purpose of the legislation, that is, to help assure that appropriate asbestos abatement activities are carried out in Federal facilities. We do, however, have several basic concerns.

First, the bill does not recognize the actions taken to date by many agencies, including the General Services Administration, to address the health hazards associated with asbestos. The bill appears to require, for example, a series of identification inspections in all buildings, even those where abatement actions have been completed or are planned in the near future. Similarly, it is unclear whether lessors' current certifications concerning asbestos status would have to be replaced by a new inspection procedure. To the extent that previous or existing actions by the Agency meet the requirements of the proposed legislation or any regulations to be issued by the Environmental Protection Agency, then duplicative actions should not be required.

Second, we are concerned that the Environmental Protection Agency be required to consult with this agency concerning the development of new regulations on this topic. As indicated earlier, we are undertaking an ambitious program to address the hazards associated with asbestos, and are in the process of implementing that program at this time. Our standards meet all currently known OSHA and EPA requirements and guidance concerning the abatement of asbestos.

Third, although the title of the bill mentions Federal buildings, it is our understanding that the intent is to have EPA issue regulations to apply to any publicly accessible building.

To some extent, the distinction between Federal and non-Federal facilities is unclear. For example, the bill requires the Administrator of EPA to develop a schedule for inspection of Federal buildings, but requires revisions and additions to the schedule for both Federal and non-Federal buildings.

Fourth, and finally, we believe that the bill places certain responsibilities in the bill with the Administrator of EPA that should reside with the buildings' owners. EPA should issue overall guidelines with implementation left to individual Agencies.

In summary, GSA is committed to developing and implementing an effective, efficient program to control asbestos containing materials in Federal facilities and to assure the health and safety of Federal workers. We appreciate the Committee's concerns and assistance in this area.

That concludes my opening remarks. I would be happy to answer any questions that the Subcommittee may have.

Questions for Terence C. Golden, GSA

1. **What training and other qualification did GSA require its asbestos inspectors to have in (a) the 1980 through 1982 survey and (b) the 1985 through 1986, survey of Government-occupied buildings?**

   How did GSA assure that all inspectors met those requirements for both surveys?

The 1980-1982 inspections were performed by assessment teams comprised of building managers and safety and health specialists who were knowledgeable of inspection and sampling procedures, as defined by the Environmental Protection Agency (EPA) in their asbestos guidance publication for identifying asbestos-containing materials in school buildings. Parts I and II of this document were published in March 1979. In addition, through coordination with the regional EPA asbestos control officer, these in-house personnel were trained in state-of-the-art inspection and assessment techniques including sample collection. It should be noted that in the early 1980's the availability of trained or experienced professionals for surveying asbestos building products was very limited. EPA did not establish asbestos pilot training centers until 1985.

All bulk samples were sent to qualified analytical testing laboratories for independent analysis and results were submitted to the appropriate General Services Administration (GSA) office for review.

The current, ongoing (1985-1986), resurvey initiative of GSA-owned and leased buildings for all asbestos-containing materials is being performed by trained safety and health professionals employed by GSA or under contract. Training initiatives included sample collection and visual determination techniques of suspect asbestos-containing materials (ACM), review of analytical testing results of samples and the proper assessment evaluation for determining the overall potential risks from asbestos in the building. The courses given through the EPA pilot training centers and recognized university programs or the use of contract industrial hygiene professionals provided this expertise. This initiative complies with the sampling and assessment strategy recommended by the EPA's latest asbestos guidance document (June 1985) and will be completed by September 1986. All bulk samples collected are sent to qualified analytical testing laboratories for independent, accurate results.

2. **Why did GSA's initial survey (1980 through 1982) not include leased buildings even though the Commissioner of the Public Buildings Service established a requirement on November 18, 1980, that all leased buildings be assessed for asbestos?**

The Public Buildings Service (PBS), in 1979-1980, established additional initiatives in coordination with the Environmental Protection Agency (EPA), which prohibited friable asbestos materials in GSA-owned or leased buildings unless it is enclosed or sealed.

Also, in 1980 an asbestos clause was included in all applicable construction/maintenance contracts and leased space Solicitation for Offers (SFO).

As part of the requirements contained in the SFO, all lessors were required to certify the presence or absence of asbestos in their space/building. The certification was further substantiated by a clause that allowed GSA to demand abatement of any friable asbestos condition found, or revoke the lease agreement, i.e., relocate. To validate lessor certifications, GSA performed independent surveys of selected leased space. Approximately 10 percent of selected leased space inventory was surveyed in this regard as a backup check.

3. **What is GSA's estimate, based on its current resurvey of its buildings, of the scope and cost of asbestos abatement in all Government-owned buildings under its control?**

How will GSA prioritize needed abatement work given the fact that EPA no longer endorses the algorithm method once used by GSA for this purpose?

To implement the intent of the new EPA guidelines, GSA brought together the best professionals in its organization from around the country to form an Occupational Health Safety and Environmental Action Group. This aggressive effort was one of the top priorities of the Administrator, and was delegated to the Commissioner, Public Buildings Service for implementation. They feel this concern regarding the protection of building occupants was of paramount importance.

The action group over a period of several months, reviewed and evaluated past GSA asbestos program initiatives, all regulatory guidelines in force and also accepted industry consensus. The recommendations of this action group provided the directions, under the Commissioner's guidance, to resurvey all buildings in our inventory. After reassessing the facilities and ranking them according to their potential for exposure, abatement schedules and requisite funding were formulated.

This funding includes the completed abatement of 22 of the 45 priority buildings and some of the approximately 117 other facilities with a less immediate potential for contamination and exposure. The remaining buildings have been scheduled for timely abatement.

Construction funds of approximately $26.9 million have been budgeted for fiscal year 1987 asbestos projects. Funding for abatement of upcoming projects (i.e., fiscal year 1988 to fiscal year 1991) is estimated to be $223.4 million.

These projects were prioritized using a modified version of the old EPA assessment algorithm method. This recommended algorithm guide, was an acceptable assessment technique according to the EPA up to 1984. All of the 45 priority facilities were already ranked and schedules developed for initiation in subsequent fiscal years. After EPA's recommendation to limit the reliance on this assessment technique as the sole determining factor, GSA reviewed the appropriateness of the algorithm and concluded that while a particular numerical standing is not truly indicative of the total potential to human or environmental exposure, it is extremely useful as one of the determining factors along with such concerns as funding limitations, need for renovation, repair or alteration work and continuing deterioration of the asbestos-containing materials (ACM).

In conjunction with the action group promoted resurvey initiative of 1985-1986, the inspection and sampling guidelines in the EPA "Purple Book" required clarification and modification to GSA's approach in surveying and evaluating the risk in buildings in our inventory. One new assessment technique GSA developed was a flowchart for inspecting and sampling materials, pipe and boiler insulation, and all other types of ACM. The charts show pathways that lead to control measures, e.g., assessments, special operation/maintenance programs, abatement actions and documentation.

4. How does GSA assure that its asbestos removal contractors follow OSHA and EPA safety requirements?

What percentage of the work under contract has failed to meet these requirements, and what action has GSA taken in response?

It has been explicitly stated in all contract packages regarding asbestos abatement work awarded to private contract firms that they shall comply with all applicable OSHA and EPA regulations during the life of the project.

In addition, performance standards regarding removal procedures are delineated in contract specification documents which address the protective measures to be implemented to mitigate any exposure problems.

Pre-award contractor qualifications requiring examples of previous successful experience in asbestos abatement is mandatory and reviewed by GSA officials before initiating any work. Also, the contractor must denote in his pre-construction document submittals, the detailed procedures he will implement during the entire project to protect his workers, the building occupants, the ambient environment; and how he will complete the entire scope of work within the stated time frames.

For all other renovation and alteration projects which may indirectly affect asbestos-containing materials during their work, a clause is present which requires the contractor to bring to the attention of the Resident Engineer any suspect hazardous materials/substances (e.g., asbestos) for GSA guidance on how to properly interact with this material. Appropriate modifications to the existing contract can then be made to direct the contractor properly.

It is difficult to determine the actual percentage of contractor noncompliance with the various regulations or GSA specifications regarding asbestos control. However, when an asbestos abatement project is conducted by the contractor, GSA has instituted oversight controls, such as air monitoring and visual inspections (by knowledgeable construction engineers or contracted industrial hygiene specialists) of each completed work area, for adherence with the contract specifications and the intent of EPA and OSHA regulations. Periodic independent on-site inspections are also performed by OSHA compliance officers and EPA asbestos specialists to assure proper implementation with their agency's requirements. Please note that virtually all asbestos removal projects require that the EPA be notified in advance of the location and extent of the work, thereby allowing them to schedule unannounced inspections. GSA welcomes the assistance of these regulatory officials in determining any findings of noncompliance.

5. **How has GSA responded to conflicting elements in the guidance of EPA, OSHA, and NIOSH regarding asbestos in buildings?**

   Why is GSA currently revising its asbestos guidance to its regional offices?

In the absence of uniform Federal standards, GSA has established its own policy and procedures. This policy is based on EPA guidelines, Occupational Safety and Health Administration (OSHA) standards, and Department of Transportation (DOT) regulations. The policy is intended to protect Federal employees, the visiting public and the environment from exposure to asbestos fibers in GSA-controlled buildings.

GSA has assisted EPA, NIOSH, and OSHA in their research efforts with regard to asbestos control. We firmly believe that our efforts exceed those of most other agencies in identifying and establishing abatement schedules for the most serious conditions in the GSA Federal building inventory.

As part of the Occupational Safety Health and Environmental Action Group, an Asbestos Subgroup was formed to evaluate the present emphasis of these various regulatory guidelines. The recommendation was then formulated to update our existing asbestos control policy.

Our present revisions to the asbestos control program guidelines reflect the new state-of-the-art approach disseminated by the EPA in their latest asbestos guidance document commonly referred to as the "Purple Book".

This guide incorporated many industry consensus and Federal Agency (including GSA) recommendations that have proven to successfully address the issue of the assessment and abatement of asbestos-containing materials.

We feel our updated asbestos guidance documentation addresses and provides currently promoted procedures to implement these modified asbestos control initiatives.

6. **Since 1980, GSA has required lessors to certify, for new leases only, whether their buildings contain friable asbestos. What reliance does GSA place on such lessor certifications?**

   Do GSA lease agreements contain language to provide remedy if such certifications prove false?

In the lease contract documentation entitled "Solicitation for Offers", all lessors must certify as correct their answers to several questions, including the presence or lack of friable asbestos in their building which could affect the Federal occupants in the proposed leased space.

This signed certification form contains such language that allows GSA to demand abatement of any friable asbestos condition found at the lessor's expense if it is proved the lessor falsified this statement. Otherwise, GSA can revoke the lease agreement and pursue relocation to an acceptable space that meets GSA policy to provide the same protection for all Federal employees in all locations.

If a positive answer to this question is given, then appropriate abatement is to be completed by the lessor prior to entering into a lease agreement. As a policy oversight mechanism, GSA conducts random leased space surveys to address the observed presence and condition of asbestos-containing materials and then reconciles it with the submitted certification statement for consistency. Then GSA will contact the lessor to rectify any unacceptable findings as required.

ASSISTANT POSTMASTER GENERAL
Government Relations Department
Washington, DC 20260-3500

June 2, 1986

Honorable Robert T. Stafford
Chairman, Committee on Environment
  and Public Works
United States Senate
Washington, D.C. 20515-6175

Dear Mr. Chairman:

Recently, we received a request from members of your staff for the views of the Postal Service on S.2300, the proposed "Federal Building Asbestos Hazard Act of 1986." We welcome this opportunity and ask that this letter be made a part of the official record of the May 15 hearing on S.2300.

This legislation proposes to reduce the public's exposure to harmful asbestos by authorizing the Environmental Protection Agency to prescribe standards and regulations governing the detection, abatement, removal and disposal of friable asbestos in Federal and covered non-Federal buildings. As part of this authority, the EPA would be responsible for developing a model contractor accreditation plan to be used by the various States in accrediting persons performing asbestos abatement functions. Three years after the bill's enactment, any Federal instrumentality would be prohibited from purchasing or leasing a building unless such building, upon inspection, was found to be asbestos-free or was made subject to a valid asbestos abatement plan.

The Postal Service shares the bill's commitment to the important task of detecting and abating dangerous asbestos in buildings that are accessible to the public, and acknowledges its obligation to protect its employees and customers from the effects of harmful asbestos. As part of an aggressive Friable Asbestos Control Program developed with the assistance of the Environmental Protection Agency, the Postal Service has provided approximately 250 employees with specialized training in the identification and control of friable asbestos. Inspections conducted at virtually all of the approximately 34,000 postal sites, both owned and leased, across the country, found friable asbestos material in about 1,400 facilities. To date, corrective action -- including encapsulation and removal -- has been initiated in most of these buildings at an estimated cost of $49 million. Work has been completed in more than 700 facilities. Conditions at the remaining facilities are routinely monitored in order to ensure that employees are protected from exposure and that applicable Occupational Safety and Health Administration standards are met. Careful monitoring of the conditions at affected locations will continue as long as the asbestos remains in place.

We are proud of the success of this program, and are concerned that enactment of S.2300 could hinder its momentum and effectiveness. The inevitable uncertainty concerning the new abatement standards which the Environmental Protection Agency would be required to promulgate would mean that further efforts to continue the existing Postal Service program would proceed at the risk of technical non-compliance with the letter of the future EPA standards. The overall expense of the program could be significantly increased if the Postal Service had to revisit corrective actions already taken in order to bring abatement efforts into compliance with the particular details of the new EPA standards once available, even though actions taken under the existing postal program with EPA assistance may be just as effective.

We also have some concern with the proposed model accreditation plan for asbestos abatement workers as it is presently described in the bill. We agree that such a program could make an important contribution by ensuring that asbestos inspection, abatement, and management work is performed by qualified individuals. We are concerned, however, that the legislation not permit any interpretation that the Federal employees responsible for conducting asbestos abatement activities within the various agencies could be required to complete a State-promulgated program in order to receive accreditation. We believe that consideration should be given to stating expressly that individuals, or at least Federal employees, may alternatively receive accreditation by successfully completing an EPA-approved training course. While this seems implied in the definition of "accredited asbestos contractor" in proposed section 203(6), it is not specifically addressed in the substantive portion of the bill.

We believe that proposed section 209, containing the restrictions on Federal facility leasing and purchasing, would have little impact on the Postal Service. As a matter of law, this provision arguably would not apply to the Postal Service by virtue of 39 U.S.C. Section 410, which generally provides that laws dealing with Federal contracts and property apply to the Postal Service only as prescribed within title 39. Nevertheless, in view of the Postal Service's strong commitment to maintaining a safe environment for its employees and customers, it is unlikely that a building containing friable asbestos would be acquired as a postal facility.

If you desire any further information or assistance, please contact me on 268-3731.

Sincerely,

William T. Johnstone

STATEMENT OF GREGORY A. HUMPHREY, DIRECTOR OF LEGISLATION
AMERICAN FEDERATION OF TEACHERS, AFL-CIO
TO THE SUBCOMMITTEE ON TOXIC SUBSTANCES
AND ENVIRONMENTAL OVERSIGHT
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
U. S. SENATE
May 15, 1986

Mr. Chairman and Members of the Subcommittee:

I am Gregory Humphrey, director of legislation for the American Federation of Teachers. On behalf of the AFT, I want to thank you for this opportunity to place our views in support of the Asbestos Hazard Emergency Response Act of 1986 before this Committee. We would also like to convey the AFT's appreciation to the Chairman and to members of this Subcommittee for their efforts to find a solution to the problem of asbestos hazards in schools. This Committee has played a crucial role in pushing the EPA to do more than hope that the hazard of asbestos would go away. The job is not done yet and this bill is a necessary step.

AFT's members strongly support your efforts to find a safe resolution to the serious problem of friable asbestos in the schools. Because we represent more than 600,000 teachers and other school-related personnel in primary and secondary education, we speak for people who may themselves be placed at risk if a solution is not found for the asbestos problem. The AFT also represents thousands of state employees and health care professionals who work in hospitals and health facilities that could also be affected by asbestos contamination. Most importantly, our union acts as an advocate of policies which serve our nation's children. We have a special obligation to students, an obligation that includes providing them with an avoidable health risks. In our view, the presence of friable asbestos in our schools is a danger to the health and well-being of millions of students.

In previous testimony before this Committee, the AFT has called for the swift enactment of regulations by the Environmental Protection Agency for uniform standards for the assessment and removal of asbestos hazards.

We have also called for adequate federal financing for necessary asbestos abatement, including full funding of the Asbestos School Hazard Abatement Act (ASHAA). We believe that the legislation before this Subcommittee today prescribes precisely the steps which must be taken to resolve this problem and with the passage of this bill, the nation will finally have a law with teeth in it to rid our public schools of asbestos.

ASBESTOS HAZARDS

Friable asbestos is considered and recognized to be one of the most toxic substances in the environment, particularly in schools and public buildings. Yet, not very long ago, asbestos was considered a safe and desirable material for building construction. From the end of the Second World War until the early 1970's, asbestos was widely used in many schools and public buildings as an insulator for heat, cold and noise and as a fire retardant. Asbestos could prevent heat loss but more importantly, it could reduce the warping of steel beams in the case of school fire. This property of asbestos could prevent structural collapse and allow rescuers time to evacuate endangered students and staff. In buildings throughout the country, asbestos was either sprayed or troweled on beams and ceilings in an effort to make buildings safer.

Ironically, the substance which once was thought to potentially save the lives of students, teachers and other school personnel may today be a significant threat to their health. It is universally recognized that asbestos is carcinogenic and could lead to lung cancer, mesothelioma, asbestosis and numerous other diseases. The scope of the asbestos problem is staggering. In 1984 the Environmental Protection Agency (EPA) estimated that 31,000 school buildings contained friable asbestos. By conservative estimates, 15 million children and 1.4 million school personnel could be at risk. Children are considered more at risk than adults. Because of their level of activity, those exposed to asbestos at a young age are more likely than adults to develop diseases related to asbestos at some point in their life.

AFT PROGRAM ON ASBESTOS

The AFT has attempted, in a reasonable manner to inform the public and our members of the potential hazards facing them. As part of the national public service advertising campaign called "Public Service Announcement in the Public Interest," the AFT has distributed a full-color, 30-second television ad on the hazards of asbestos in schools. The spot was designed to alert the public to the hazards of school asbestos while encouraging people to write AFT for a free information guide, "Asbestos: A Time Bomb in Our Schools," which outlines the problems of asbestos and recommends appropriate courses of action.

The asbestos spot is the most successful of the entire TV campaign and we estimate that it is airing on approximately 300 stations across the nation. More than 12,000 guides have been distributed and our office answers hundreds of calls from AFT locals and the general public. We have attached a copy of our guide as an appendix to this testimony.

EPA INACTION

While we are attempting to educate the public and our members about the hazards of asbestos, we are at a loss to explain to them, with all the documented evidence of the dangers of the presence of friable asbestos, why the EPA has failed to act in a responsible manner as the Regulatory Agency mandated with protecting the public from toxic substances.

Between 1973 and 1976, the EPA issued regulations banning the further use of asbestos in buildings. In 1979, the EPA instituted a technical assistance program which was designed to urge school districts to voluntarily identify and abate asbestos hazards. And, in 1982, the EPA issued regulations which required all public school districts and private elementary and secondary schools to inspect for asbestos, analyze any friable material, and, where friable asbestos is found, to notify the school employees and the children's parents of its presence.

What is significant, however, is what EPA has refused to do and that is to (1) issue clear uniform standards for determining when asbestos is hazardous, and (2) require the abatement of hazardous asbestos. Schools are only required to inspect for hazardous asbestos. If found, there is a requirement to notify but no requirement that the asbestos be removed. Because there are no federal regulations establishing uniform standards and no requirements for effective abatement, schools which are not eligible or were not awarded federal funds under AASHA are not required to take corrective measures. Recipients of ASHAA funds must (a) follow EPA procedures for evaluating and abating hazardous asbestos; (b) use only EPA certified contractors for proper abatement; (c) advise and protect school personnel performing corrective action and; (d) follow EPA guidelines for disposal of asbestos materials. However, schools which were not awarded federal funds are not required to follow such procedures.

Tragically, many school districts not receiving ASHAA funds which are voluntarily removing hazardous asbestos are improperly doing so, and health experts agree that improper abatement often causes more adverse health problems than the hazardous asbestos itself. EPA´s own findings indicate that 75% of all asbestos abatement work is done improperly. Currently, there are no federal regulations establishing uniform standards for assessment and removal of hazardous asbestos. It is in this area where the EPA´s action comes into serious question.

EPA officials claim that regulations establishing uniform federal standards for hazard assessment and corrective action are not necessary because their asbestos school program is working. EPA´s own documents point to the contrary. A 1984 evaluation of the "Identification and Notification Rule" revealed only 11% of all school districts were in compliance with all aspects of the rule, and only 4% of school districts containing at least one building containing hazardous asbestos were in full compliance.

Further, the study revealed that in many instances where school district officials believed they had successfully completed the abatement work, the EPA and state officials disagreed as to the quality and adequacy of the work.

ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986

With passage and enforcement of this legislation, we may, for the first time, realistically look forward to the day when we can teach our children in school rooms free of asbestos hazards. This legislation is comprehensive and it is necessary. It would mandate the EPA to promulgate regulations establishing uniform standards by which all schools, both primary and secondary, could assess their asbestos hazards. Specifically, it would require EPA to issue regulations prescribing inspection procedures; standards for determining whether asbestos, when found, is hazardous; mandatory abatement and standards of performance for abatement of hazardous asbestos; standards for operation and maintenance for non-hazardous asbestos; and standards for disposal of asbestos debris. The bill also sets alternative standards if the EPA fails to act.

Further, the bill requires the EPA to adopt a model contractor accreditation plan for states to adopt which will assure that all asbestos abatement is properly done.

CONCLUSION

Asbestos is a time bomb in our schools. Swift passage of the Asbestos Hazard Emergency Response Act of 1986 would diffuse that bomb.

The AFT believes Congress must act now to require EPA to issue uniform federal regulations requiring all schools to assess for asbestos hazards and to establish federal standards for corrective action. Uniform federal standards, coupled with adequate funding is clearly the course to pursue to assure that local abatement efforts are properly conducted, that federal funds are well spent and that health risks for our children are minimized. Failure to pursue any other course will be nothing short of a national disgrace.

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AMERICAN LUNG ASSOCIATION
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STATEMENT OF ALFRED MUNZER, M.D.

ON BEHALF OF

THE AMERICAN LUNG ASSOCIATION
THE AMERICAN THORACIC SOCIETY

TO THE

SUBCOMMITTEE ON TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

MAY 15, 1986

National Headquarters 1740 Broadway, New York, N.Y. 10019 • James A. Swomley, Managing Director

Mr. Chairman and Members of the Subcommittee, the American Lung Association and the American Thoracic Society, ALA's medical section, thank you for this opportunity to comment on the public health risks associated with asbestos exposure in the nation's schools and federal buildings. I am Alfred Munzer and I am a physician who specializes in diseases of the lung. As a volunteer for the ALA, I serve on their Board of Directors and chair their Government Relations Committee.

The protection of respiratory health is of primary importance to the ALA. Founded as the National Tuberculosis Association in 1904 to fight what was then the country's leading cause of death, the ALA's current goal encompasses the control and prevention of all lung diseases. A major program emphasis is the control of air pollutants in outdoor, indoor and workplace environments. The ALA has had a long-standing interest and involvement in the prevention and control of asbestos exposure in the occupational setting, including development of proposals for adequate compensation of injured workers. The emerging problem of indoor air pollution is receiving special emphasis in ALA's program. Asbestos exposure in environments other than the workplace presents a particular problem--especially in the nation's schools.

Commerical use of asbestos, a naturally occurring fibrous mineral, began in the last two decades of the previous century. By the 1930's, it was generally recognized that the use of asbestos fiber in manufacturing processes could lead to pulmonary fibrosis called asbestosis. Since that time, there has been a steady increase in scientific information relating asbestos exposure with both nonmalignant and malignant effects which occur primarily in the lung. I will not take time to review all of the data on asbestos-related diseases generated during this period of time. Rather, I have attached to my statement guidelines developed by the ATS for case evaluation. I call your attention to this document since it provides an excellent overview of the definition, diagnosis, and causal determinants of asbestos-related diseases--asbestosis, lung cancer, and malignant mesothelioma.

Asbestos-related diseases are responsible for significant concern in our society among individuals and various groups. This interest extends beyond medical, public health, and research professionals. Occupational health aspects of this issue have created opportunities for the interaction of biomedical and social scientists, government and regulatory officials, industrial management, labor organizations and the legal profession. Recent public concern about the possible health risks of this material are unprecedented. This concern has grown since these risks have been associated with exposures that are less predictable than those associated with primary industrial contact. Such risks from nonoccupational exposures include exposure to asbestos products inside buildings.

While there has been and continues to be a significant debate about the health risks from occupational exposures, much of the general public's current concern relates to exposures in schools and public buildings. An earlier response to this concern was legislation requiring EPA to direct all schools in the United States to test for asbestos-containing products, and if found, to notify parents and school employees. To date, EPA has provided schools with neither the guidance as to what further action should be taken if asbestos materials are found, nor estimates of the magnitude of the potential risk associated with these products. As can be suspected from such lack of adequate information, some school administrators have concluded that these materials pose a high cancer risk and have taken action consistent with this conclusion. Others have postponed action. In some instances, it can be assumed that asbestos products in excellent condition, emitting few or no fibers, have been removed unnecessarily, while in other instances materials emitting fibers at an unacceptably high level have received no attention. It can be anticipated that the decision-making process with respect to asbestos products in public buildings has operated in a similar manner.

Guidance is necessary to develop a rational approach to the assessment of public health risks from asbestos products in public buildings including schools. Such an approach could be used to determine when removal is called for and when proper maintenance of these products is preferable to removal. S. 2083 and S. 2300 provide such guidance by directing EPA to develop a regulatory program which includes procedures to identify asbestos hazards and develop appropriate abatement activities.

The ALA suggests that any regulatory strategy developed as a result of these legislative proposals also include the requirement for the development of a health-based standard which can be used to determine whether the presence of asbestos products presents a public health risk. Section 204 (a)(2) does not specifically mandate a health-based standard. This may lead to the general public's continued confusion regarding the level of public health risk from asbestos products in public buildings and especially schools.

The known asbestos-associated diseases have all been shown to be dose-related. While this is not the appropriate forum for a discussion of this scientific issue, we feel it reasonable to propose that the scientific data base can and should be used in the decision-making process as a means of assessing the likelihood of exposures which pose a public health risk. Setting of permissible limits of exposure to asbestos depends on a number of variables including fiber types and the range of asbestos related diseases that may result from such exposures. The cumulative dose of exposure to asbestos which will produce early indicators of asbestosis may very well be lower than that which is shown to result in excess risk of lung cancer. It is likely that even lower, and almost certainly short term, exposures to asbestos will lead to cases of mesothelioma. From a regulatory perspective, a standard can reasonably be based on data related to asbestosis or lung cancer. Data based on asbestosis probably should generate a more stringent standard.

The last comment I would like to make relates to requirements for the development of abatement standards. Such standards, in our opinion, should include a variety of abatement options covering the range of probable material condition. Such standards should identify when removal is necessary and when in other circumstances, proper maintenace of these products or sealing of the products is preferrable to removal.

Action on this public health problem should be taken. Because of public concern about the health risks, a rational approach that provides for abatement based on sound standard setting must be developed and implemented in good faith. The legislative proposals before this Subcommittee today are excellent examples of such an approach.

PROPOSED GUIDELINES FOR CASE EVALUATION
BASED ON ASSESSMENT OF EVIDENCE AVAILABLE MARCH, 1983

The case evaluation process involves establishing the presence of disease (diagnosis), its cause, and the extent of its functional effect on the individual (impairment).

I. Diagnosis and Determination of Cause

A. Asbestosis

Asbestosis is a pneumoconiosis defined as diffuse fibrosis of the lungs caused by asbestos exposure. Its features include rales (crackles), breathlessness, finger clubbing, lung function abnormalities (usually reduced volumes and impaired gas exchange), radiographic changes (irregular and linear opacities), and histopathologic demonstration of fibrosis with tissue fiber identification. The first four of these are non-specific; changes on the x-ray and pathologic tissue examination have increasing, but by no means absolute, specificity. Individually, these are not sufficient to make a diagnosis; in combination, the diagnosis depends upon weighing probabilities and assessing the evidence *in toto*, an important component of which is estimation of past exposure. In practice, the diagnosis is usually established on radiographic and exposure evidence. An expert committee of the College of American Pathologists and the National Institute for Occupational Safety and Health has recently developed guidelines for the pathologic diagnosis of asbestos-associated disease. When lung tissue is available for histopathologic examination, a diagnosis of asbestosis depends minimally upon the demonstration of discreet foci of fibrosis in the walls of respiratory bronchioles associated with accumulations of asbestos bodies (light microscopy). Additional findings are diffuse interstitial pneumonia and fibrosis. Neither fibrosis or asbestos bodies alone is sufficient for the histopathologic diagnosis of asbestosis.

B. Non-malignant Pleural Effects

These include pleural effusions, focal hyaline thickening (plaques), and diffuse pleural fibrosis. Plaques indicate exposure, not disease, because they do not cause symptoms or functional impairment. Attributability is assessed on the basis of an exposure history and the absence of other causal factors.

C. Lung Cancer

The diagnosis of lung cancer in asbestos-exposed individuals is no different than in other clinical settings. In population studies of various occupational groups, evidence of asbestosis has been found when excess lung cancer risk is demonstrated for comparable levels of exposure. In the individual case of lung cancer, the cause cannot be determined precisely. For this reason, the judgement must take into account length, intensity and character of exposure, evidence of other asbestos-associated diseases, and smoking history.

D. Malignant Mesothelioma

The primary issue is valid diagnosis. This diagnosis can generally not be established clinically, or radiographically, or with pleural fluid examination, or with limited biopsy tissue. Since the potential for misdiagnosis is considerable, adequate tissue specimens should be examined by pathologists experienced and expert in the diagnosis of this tumor (e.g., mesothelioma panels). When the diagnosis has been established, a history of exposure, even if short, is sufficient for a judgement of causation.

II. Assessment of Impairment

This follows the establishment of an asbestos-associated disease. In cases of extensive asbestosis or extensive pleural fibrosis, reference should be made to criteria for impairment in restrictive disorders outlined in the ATS statement on evaluation of impairment/disability secondary to respiratory disease. Use will be made of pulmonary function tests and exercise performance testing when necessary. Regional panels will be responsible for periodic updating of impairment level.

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INSPECTION FOR ASBESTOS HAZARDS IN SCHOOLS AND COMMERCIAL BULDINGS

TESTIMONY OF

J. Brent Kynoch, President
Asbestos Abatement Services, Inc.

BEFORE THE

Subcommittee on Toxic Substances and Environmental Oversight
Committee on Environmental and Public Works

United States Senate

May 15, 1986

A John J. Kirlin Company

Asbestos has been utilized widely in building construction. The popularity of asbestos-containing materials' usage in construction grew widely in the period following World War II. Asbestos is looked upon as a miracle material. It is a naturally occurring mineral that is very easy to mine and process. Further, it has outstanding thermal characteristics (desired for insulation), has a tensile strength greater than steel, and is fire retardant. For these reasons, asbestos was used in a large number of applications in building construction: fireproofing, acoustical ceiling material, pipe insulation, boiler and vessel insulation, flooring materials, shingles, etc. This inexpensive, easy to use, highly versatile material was used routinely in the above applications, especially in the building boom periods of the 1960's and early 70's.

Until about three years ago, liability for asbestos-related injuries derived primarily from exposures in the workplace, primarily among shipyard workers exposed during the massive effort to build a two-ocean navy after Pearl Harbor in World War Two. Various experts estimate that between 50,000 and 300,000 cases of asbestos disease will have developed from these exposures by the end of the century. Approximately 30,000 claims have been filed to date, with new claims averaging over 500 a month. Less than 10,000 claims have been adjudicated or settled.

It is only recently that concern about asbestos exposure has extended to schools and commercial buildings. Over $80 billion in claims have been filed since 1984 alleging damages from asbestos in buildings. Most of these claims are against manufacturers of insulation and ceiling and flooring products containing asbestos. The claims demand that the manufacturers indemnify building owners for the costs of "abating" (ie controlling through repair, encapsulation, or removal) the potential asbestos hazard.

The United States Environmental Protection Agency (EPA) estimates that asbestos-containing materials can be found in about 20% of this nation's buildings. This represents approximately 733,000 buildings.[1] Thus, one can realize that asbestos presents a significant problem in our nation's buildings that must eventually be dealt with.

The fact that asbestos is a human carcinogen is now widely accepted. In fact, asbestos was the subject of the first occupational safety and health standard issued by the Department of Labor following the passage of the Occupational Safety and Health Administration (OSHA) Act of 1970. Subsequently, the EPA passed legislation limiting the uses of asbestos in 1973, 1975, and 1980. These moves by OSHA and EPA are among the most positive steps ever taken by these agencies to eliminate a substantial public health hazard. While these regulatory actions serve to show that this nation's regulators were aware of the hazards presented by asbestos, enforcement has often lagged behind and failed to deal with the problem. This is particularly true of the overwhelming number of buildings containing such products. Much work remains to be done in buildings to deal with asbestos-containing materials that may present a significant public health hazard.

Senate Bills S2083, THE ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986; and S2300, THE FEDERAL BUILDING ASBESTOS HAZARD ABATEMENT ACT OF 1986; provide for a giant step in reducing the public health hazard already previously noted by federal agencies such as OSHA, EPA, the Federal Drug Administration, the Consumer Product Safety Commission, the Mine Safety and Health Administration, the Materials Transportation Safety Board, and the Department of Education. These bills provide quantifiable measures supporting previously issued regulations in the form of the National Emissions Standard for Hazardous Air Pollutants (NESHAPS) and the Asbestos in Schools Rule. Additionally, bill S2300 provides for a step that should have been taken long ago in terms of identifying friable asbestos-containing materials in the nation's publically accessible buildings.

Mandatory inspections of school buildings has been required since May 27, 1982, under the EPA's final regulations requiring inspections for the nation's school buildings. From public comment on the rules, it appears that the concern over school buildings focuses on the lengthy latency period of cancer development caused by inhalation of asbestos fibers. Thus, measures would be taken to protect young children from exposure to asbestos because the 15-20 year latency period for developing asbestos-related lung cancers would strike these persons in the "prime" of their lives.

If this, in fact, was the purpose of the rule for asbestos inspections aimed at schools, then attention should also have been paid and should now be paid to other publicly accessible buildings containing asbestos where children enter. These buildings include hospitals, shopping malls, movie theaters, restaurants, and any other number of publically accessible buildings, including homes. Further, the protection of our nation's population from the hazards of asbestos should certainly extend beyond school children.

One can anticipate that bill S2300, especially, will be opposed by building owners and their professional associations. However, building owners are already on notice concerning the hazards of asbestos and ignore hazards in their buildings at their peril. In other words, building owners must "pull their heads out of the sand" and act in the best interests of their tenants, employees, and guests. In fact, a building owner can go far in protecting his liability by inspecting his buildings for the presence of asbestos and subsequently by adopting an asbestos management plan that will keep asbestos-containing materials in his building from becoming potentially hazardous.

To date, very few claims have been made against building owners by tenants or other persons alleging damages from exposure to asbestos present in buildings. But the history of asbestos litigation shows a constantly expanding circle of potential defendants as hazard detection technology and epidemiology advances and new legal doctrines of liability evolve. From employers to third party manufacturers to suppliers, distributors and users; the courts have consistently stretched theories of liability to reach any corporate "deep pocket" (or more precisely its insurers) who becomes ensnared in asbestos litigation.

There is little doubt that existing legal doctrines could be used by resourceful trial lawyers to find the building owner liable for asbestos-related injuries or economic loss caused by the presence of asbestos in his building. The building owner's liability for economic loss or personal injury from asbestos in his building could be established in the following ways.

- tenants, guests, and maintenance workers in the building could be exposed to asbestos fibers from insulation in pipe covering, ceilings, or flooring material which has begun to fray or flake from age and normal wear and tear.

- these persons could also be exposed when asbestos material is disturbed during renovation or remodeling.

- owners could also be liable, as third parties, to renovation or demolition workers involved in the abatement or removal of asbestos if the owner could be found to have developed faulty specifications which misled the contractor.

- it is well-established law that builders are liable for injuries to all forseeable plaintiffs--including buyers of used buildings--from both their negligence and their failure to disclose known dangerous conditions. But builders and owners who become sellers may also be found liable under less familiar but far reaching legal doctrines such as strict liability and implied warranty of habitability to buyers and tenants of buyers. This liability could extend to both economic and personal injuries stemming from undisclosed asbestos in the purchased building.

- even real estate brokers had better beware. It used to be that the broker, as agent of the seller, had no obligation under the law to the buyer. This is no longer the case. Courts in Illinois, California, Washington, and Alaska have held that the broker has an obligation to investigate sellers' claims about the property. The Alaska Supreme Court says that a broker can be held liable for passing on incorrect information even if the broker checked it out but made a mistake. This is close to the standard of strict liability--liability without fault--imposed on many product liability defendants. If courts have held brokers liable for leaky basements, unstable soil, or lead paint, it is not much of a step for them to hold brokers liable for injuries or economic loss from unreported asbestos in pipe insulations, heating ducts, or ceilings.

To understand the potential vulnerability of a building owner, consider what constitutes a recoverable injury in asbestos litigation. In addition to asbestosis, a non-malignant but irreversible lung disease almost exclusively found in occupational settings of high exposure, asbestos also causes cancer: mesothelioma a rare, but invariably fatal, disease of the lining of the lung or stomach, and lung cancer. While both forms of cancer are dose-response related, medical science cannot yet tell us whether ~~there~~ is a safe threshold of exposure to asbestos below which cancer will not develop. People suffering from mesothelioma and lung cancer have been very successful in recovering huge judgements from asbestos manufacturers even when their exposure was very limited. The fact that lung cancer has many causes other than asbestos has been of little help to asbestos defendants. Asbestos claimants have frequently won million dollar verdicts even though they may have smoked two packs of cigarettes a day for thirty years.

Many tenants in office buildings get lung cancer, and a few get mesothelioma. If they can prove they were exposed to asbestos fibers in a building, they could bring a claim against the owner. In the case of a death claim, owners can take no comfort in objective evidence from autopsies. All of us have asbestos fibers in our lungs absorbed from background levels in the ambient air. It is not easy to convince a jury that these fibers did not come from the claimant's building if asbestos is present. If a building owner has inspected his facility and can document, through a report from a reliable inspector, that the asbestos-containing materials in his facility are not in a condition that causes the release of asbestos fibers, then he might avoid nuisance claims from tenants.

A handful of building owners, usually larger and more well-established firms, have realized their potential liability and have voluntarily instituted building inspections to assess potential asbestos hazards in their facilities. One such building owner, in the Washington, DC area, has found, not suprisingly, that well over one-half of the asbestos-containing materials located in their structures did not presently present a potential asbestos hazard. These inspections were performed by a reliable, well-qualified asbestos consulting firm. Thus, the reports provided to the building owner by this consultant are complete and thorough documentation of the conditions present in each building at the time of the inspection and will serve to protect the building owner in the event of any claims for injury from tenants, occupants, or guests. When "non-hazardous" asbestos-containing materials have been located, the building owner has instituted maintenance plans to monitor the condition of these materials and to insure that these "non-hazardous" materials remain that way. Such a program involves training of maintenance workers, janitorial staff, and others on the hazards of asbestos and how to deal with asbestos should it be encountered during their work. The consultant will provide the building owner with periodic re-inspections and ambient level air monitoring to note any increase in asbestos fibers in the atmosphere of the building.

Where potentially hazardous materials have been located, the consultant has prioritized, for the owner, these hazards in the order of their relative significance, and the owner has instituted a plan for timely abatement of these potential hazards. Where abatement is delayed for a significant period of time, access to the area has been limited and the consultant has provided for routine air monitoring checks until a proper, thorough, and safe abatement can be performed within the constraints of the building owner's budget. This building owner has noted that just by documenting the condition in his building and by adopting a plan for dealing with asbestos, he has significantly reduced his liability from damage suits arising from the potential illness of his building tenants.

For the building owner who does not document the conditions of asbestos-containing materials in his building, there is an even greater chance of adverse litigation from his tenants, employees and/or guests. Even if your tenants do not become ill, they can still sue and recover because they fear they might develop cancer in the future. Cancer phobia claims are big business for trial lawyers. They have recovered judgements in excess of $100,000 for clients with no existing disease or disability.

Last year in Houston, Texas, three tenants in the Medical Towers office building sued the building owners, the building manager, and the remodeling contractor for $110 million because they claimed they were exposed to asbestos dust which got into the air ducts and elevators when a ceiling was removed. They alleged no disease or disability--only the FEAR of becoming ill in the future. This incident presents a significant case study, especially in light of S2300 and S2083.

A floor of the Medical Towers office building was being remodeled and significantly renovated for a new tenant. Involved in this renovation was the demolition of an asbestos-containing ceiling. Apparently, no control methods were employed during the demolition of this ceiling, and the building's air distribution system distributed the dust created from this demolition all throughout the building. A tenant entered his office one morning to find a fine white dust coating every horizontal surface in his space. The tenant had this dust tested for the presence of asbestos, and the test was positive. Shortly thereafter the tenant filed the $110 million lawsuit. The building manager was quoted as saying he "had no idea asbestos was there" when the ceiling was removed.

Building owners do not have the option to do nothing. The massive publicity given to asbestos disease in recent years means that the building owners are now on notice of the risks from asbestos products. The courts will find that since society as a whole is aware of the asbestos problem, building owners have a duty to investigate and control asbestos hazards in their building.

In order to avoid liability in the future, building owners should take steps now to create a record of prudence and responsibility toward the occupants in their buildings. First, building owners need to find out whether their buildings have got an asbestos problem or not. For this the owner needs advice from experts who know where to look for asbestos-containing materials and what to do with them if and when they find them. These inherent duties required of a building owner exist with or without the proposed legislation of S2300 and S2083. The passage of S2300 and S2083 would insure a degree of continuity in asbestos inspection, assessment, and abatement throughout the nation. All building owners would operate under the same guidelines concerning the qualifications of inspectors and contractors, and under the same guidelines concerning what is "hazardous" and what is "non-hazardous". In some cases when a building owner has located asbestos in his building, he has been stampeded into hasty, dangerous and expensive removal actions which increased risks rather than eliminating them. Passage of S2300 and S2083 will help to avoid this problem. Building owners should be able to seek objective independent advice from well-trained experts who are not affiliated with a removal contractor who may have a vested interest in expensive removal.

Unfortunately, many building owners still adopt the attitude: "what I do not know can not hurt me." Many do not seem to realize that when asbestos exists in their buildings, it is truly a case of "pay me now or pay me later." Sooner or later, either through a lawsuit by building users, warranty inspection at the time of sale or at demolition, they will have to face up to their responsibility. For this reason, S2300 and S2083 are necessary legislation required by the public interests.

These bills could not have been written any better by someone who works daily in the asbestos field. The bills contain several provisions to insure follow-through on congressional intent. First, the bills provide for the establishment of a standard of competency for asbestos inspectors and contractors.

The authors of these bills, noting the inadequacies of using air sampling results as criteria for abatement action or abatement inaction, and noting the inadequacies behind certain algorithm methods, including the Sawyer algorithm proposed by the EPA in their "Orange Books,"[2] have proposed for the establishment of standards of competency for both contractors and building inspectors. The Administrator of the Environmental Protection Agency is charged with establishing criteria by which an asbestos abatement contractor can become accredited and by which an asbestos inspector can be recognized. Further, the bill provides for management plan accreditation.

This accreditation requires that a statement be attached to each management plan, established as a result of an asbestos inspection, containing words from the consultant developing and preparing the management plan that the plan is in compliance with applicable regulations and standards promulgated or adopted pursuant to this bill and any other provisions of law.

Inherent in the language of the bills are also effective "backstops" which will provide for the establishment of criteria and standards should the Administrator fail to promulgate such. These backstops serve to insure that the legislation will maintain its effectiveness even if the EPA is not timely in submission of their criteria and standards. These backstops are very well designed and are an important part of this legislation considering events of the past.

The bills also call for the posting of warning labels noting the presence of asbestos in public facilities. This is a significant educational initiative, not only for those persons performing asbestos removal and abatement, but also for the general public. The National Institutes of Health recognized in 1981, in their publication entitled "Asbestos: An Information Resource"[3], that education was necessary for supervisors or employees exposed to the hazards of asbestos. In fact, the publication devoted an entire chapter to the discussion of education. The publication noted that standards promulgated for a number of other carcinogens, including vinyl chloride, contained particular and specific requirements for employee training and indoctrination in the nature of the hazards presented, recognition of conditions that might release the carcinogen, the purpose and application of decontamination practices, etc. Bills S2083 and S2300 provide for this type of necessary, specific education in terms of asbestos for contractors, inspectors, and others exposed to the hazards of asbestos.

Most importantly, the bills do not require the abatement of all asbestos-containing materials. Rather, by establishing standards of competency for inspectors, the bills require that the inspector make recommendations on proper abatement methods based on the results of a complete building inspection. Thus, a building owner, who has asbestos-containing materials present in his facility, might find from an inspection that these materials are in fact "non-hazardous" in their present state. The inspector or consultant can then develop for the building owner an Asbestos Management Plan including an Operations and Maintenance program which would leave asbestos-containing materials in place, but educate those employees that might possibly come into contact with asbestos-containing materials as a result of their work. Thus, these bills are not a knee-jerk reaction toward the hazards of asbestos, but recognize that asbestos only creates a public health hazard when fibers become airborne. If asbestos-containing materials can be left in a condition such that asbestos fibers are not released into the air, then these materials are non-hazardous. Of course, building owners should implement measures to ensure that non-hazardous materials remain that way.

One oversight in both of these bills is the lack of an exemption from inspection for those buildings that have a) already been inspected by a qualified building inspector or b) were constructed in some period after a specific date. The EPA has previously used January, 1979, as this specified cutoff date. Thus, this precedent might be followed again, and assuming that probably no buildings were constructed after this date with friable asbestos-containing materials utilized in the construction.

Some thought must be given to exemption of those building owners who have already voluntarily inspected their facilities for asbestos-containing materials and have implemented programs for dealing with those materials. These building owners are to be commended for their prompt and swift actions in the best interests of their employees, tenants, and guests.

One of the greatest public health hazards from asbestos comes from the demolition of buildings with asbestos-containing materials. Anyone who has walked by a demolition site on a windy day can easily imagine the hazards to public health when an owner demolishes a building without first removing and disposing of all friable, asbestos-containing materials. Demolition of buildings is another oversight of these bills that should be addressed. Both S2300 and S2083 should contain language requiring an asbestos inspection of a facility in conjunction with an application for a demolition permit. Bills S2300 and S2083 propose that the Administrator develop and publish a schedule identifying the order in which buildings shall be inspected. However, in addition to this schedule, requirements already exist in the NESHAPS regulation requiring removal of asbestos-containing materials from a facility before its demolition or significant renovation. S2300 and S2083 should contain measures for asbestos inspections before a building is demolished, especially if these buildings have not been previously inspected under the schedule established by the Administrator.

The NESHAPS regulation in itself is well designed. However, the enforcement of NESHAPS appears to be less than adequate. In fact, in a Wall Street Journal article on March 5 of this year[4], it was noted that the EPA estimates that it learns of only half of the asbestos removal jobs currently taking place. NESHAPS requires that the owner and contractor properly remove asbestos from a structure before it is demolished and requires that the owner and contractor notify EPA of the asbestos removal to take place. However, EPA has no idea what percentage of jobs are going through the proper procedures for notification. If EPA is not being notified, there is no assurance that the work is being properly completed. As is well known, an asbestos project that is not properly executed can cause a greater hazard than leaving the asbestos in place.

Something must be done to ensure that NESHAPS is properly enforced. Bills S2300 and S2083 could easily incorporate measures that would ensure better enforcement of NESHAPS. A very simple solution would be a requirement for an asbestos survey of a facility prior to the issuance of a demolition permit. Demolition permits are issued on a local (usually County or City) basis and should therefore make enforcement a much easier task. Under such a proposal, a contractor or building owner applying for a demolition permit would have to provide, with this application, the results of an asbestos building inspection performed by a certified asbestos hazard evaluator. (Criteria for recognition of these inspectors and evaluators are already outlined in these bills.) If asbestos has been located in the facility slated for demolition, an asbestos removal plan must accompany the application for the demolition permit. This removal plan could be, in essence, the notification statement to EPA already required under NESHAPS.

The beauty behind this proposal is in its simplicity. Legislation requiring an asbestos inspection before the issuance of the demolition permit does not place any additional "handcuffs" on the building owner or contractor. It is merely a method of ensuring that existing, current Federal regulation is followed. In other words, this proposal will provide the enforcement mechanism which NESHAPS now lacks.

An illustrative example of the need for this sort of enforcement is the demolition of the old Hartsfield International Airport in Atlanta, Georgia. This terminal contained approximately 450,000 square feet of sprayed-on asbestos-containing ceiling material and approximately twelve miles of asbestos-containing pipe insulation. In 1984, the asbestos was removed prior to demolition, but the work was performed without any specifications, without any in-progress inspections, and without any final inspection or final clearance air samples. The demolition contractor was cited and fined for various violations for improper handling and disposal of the asbestos-containing materials. However, these citations were issued after the damage had been done.

In summary, S2300 and S2083 are necessary pieces of legislation that should be passed in order to protect the citizens of this nation from the hazards of asbestos. The precedents for this legislation are already in place in the form of existing EPA and OSHA regulations and directives from other federal agencies. If properly administered, these bills will not add a significant financial burden upon the nation's building owenrs. Rather, it will provide quantifiable measures for dealing with a hazard that building owners must already deal with in some manner and at some point in time. These bills will also serve to protect the liability of the nation's building owners by documenting the extent and condition of asbestos-containing materials in the nation's publicly accessible buildings.

If the measures presented in S2083 are adopted for the nation's schools, then the measures presented in S2300 should also be adopted for the nation's other publicly accessible buildings. S2083 and S2300 provide well-conceived, adequately worded measures for dealing with a hazard that has been recognized for centuries...the hazard of inhaling asbestos fibers.

ENDNOTES

[1] Asbestos in Buildings: A National Survey of Asbestos-Containing Friable Materials, United States Environmental Protection Agency, Office of Toxic Substances, EPA 560/5-84-006, October, 1984.

[2] Asbestos-Containing Materials in School Buildings: A Guidance Document, Part 1, United States Environmental Protection Agency, Office of Toxic Substances, C00090, March, 1979.

[3] Asbestos: An Information Resource, United States Department of Health and Human Services, Public Health Service, National Institutes of Health, No. 81-1681, reprinted August, 1981.

[4] "Bad Riddance: Ripping Out Asbestos Endangers More Lives as Laws are Ignored", Wall Street Journal, Wednesday March 5, 1986.

14755 Wildflower Lane
Delray Beach, Florida 33446
May 9, 1986

Senator Robert T. Stafford
United States Senate
Washington, D.C. 20510

Dear Senator Stafford:

I understand that you are going to be holding hearings on bills relating to asbestos in the schools. On behalf of all children who haved been exposed, are in questionable schools, and my son, who is already a victim, I ask that this letter become part of the hearings.

Dr. Richard Alan Barnett, almost 31, was diagnosed after surgery in January of '83 to have mesothylioma. The cancerous tumors were scattered over his omentum and the outer covering of his intestines. Richard had never worked with asbestos. At that time, he was doing his residency in Internal Medicine at Rhode Island Hospital. However, we learned in May of '83 that the Walt Whitman Junior H.S. in Yonkers, New York which Richard had attented was being shut down because of asbestos contamination. The school is still closed.

I was president of the PTA of Walt Whitman while Dr. Barnett was a student there (1967 -'70) and recall that the ceiling in the main corridor was deteriorating, and that on rainy days, water would drip down into the hall. That ceiling contained asbestos and the air conditioning was blowing against it. We didn't understand what a terrible hazard this was when we complained about the ceiling.not being repaired. I am convinced that Richard came in contact with his asbestos there.

I urge you for the sake of all children that you pass measures to have all schools reinspected with the EPA. I understand that many schools have not complied or have done so in a sloppy manner. Also, when asbestos has been removed, those who were exposed should be warned so that they can look for early signs of cancer ten or fifteen years down the road.

Richard had no warning. In 1983 he went through chemotherapy, surgery and radiation. He then had a year and a half of remission but new tumors have formed so that once more he is receiving chemotherapy. There is no cure for mesothylioma. PLEASE TAKE ACTION.

Very truly yours,

Evelyn Barnett

Evelyn Barnett

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June 12, 1986

The Honorable Robert T. Stafford
United States Senate
Washington, D.C. 20510

Re: S. 2083 and S. 2300

Dear Senator Stafford:

Our client, Better Working Environments, Inc. (BWE), a manufacturer of chemicals used in asbestos encapsulation and asbestos removal, is pleased to support both S. 2083 and S. 2300. BWE believes that visibly damaged or easily accessible, friable asbestos-containing material presents a clear hazard to human health, a hazard which the pending legislation attempts to reduce.

BWE is concerned, however, that, unless Environmental Protection Agency guidance documents are updated, any federal mandate to remove asbestos could increase, rather than decrease, the likelihood of exposure to dangerous levels of asbestos fibers. At present, the EPA's guidance document, known as the "Purple Book," recommends that asbestos be removed with a mixture of water and a wetting agent or surfactant. This mixture, known throughout the asbestos abatement industry as "amended water," is designed to be sprayed on to ACM as it is removed in order to wet the asbestos fibers and keep them from escaping into the air. The EPA's own studies have shown, however, that use of amended water generally does not produce acceptable levels of airborne asbestos during removal. The EPA itself acknowledges that amended water does not effectively wet the most dangerous type of asbestos fiber, amosite.

BWE is one of several companies which has developed what is called an asbestos removal encapsulant. BWE markets it as an alternative method of wetting asbestos fibers during removal. Studies have shown that a removal encapsulant is more effective than amended water in reducing airborne asbestos fibers both during and after removal. More importantly, ACM removed with a removal encapsulant is encapsulated when loaded into a hazardous waste bag for disposal. Should the bag ever leak or be punctured - as it most certainly will - the ACM will be in an encapsulated, nonfriable form. That is not the case when amended water is used. Simply stated, the use of amended water merely shifts the asbestos clean-up problem from schools and other buildings to waste sites. Use of a removal encapsulant is a more permanent, long-term solution to the problem of asbestos contamination.

Beginning in September of last year, we, on behalf of our client, approached EPA, more particularly Mr. David Mayer of the Asbestos Action Program, with a request that EPA evaluate BWE's product and then issue a technical update to the Purple Book announcing that a new technology, the asbestos removal encapsulant, was available as an alternative to traditional amended water removal. One would think that EPA, forced to admit that up to 75 percent of all amended water removal projects have been unsuccessful, would be interested in encouraging advances in the state-of-the-art. Unfortunately, our experience has been to the contrary.

We have been resisted at every turn by Mr. Mayer. At first, we were told that the EPA technical staff just did not believe that our data was correct. Then we were told that, "if your product is so good, why haven't we heard about it before"? I hope all technological advances are not met with such bureaucratic arrogance. It mattered not to Mr. Mayer that the U.S. Naval Facilities Engineering Commmand and the U.S. General Services Administration were changing their asbestos removal specifications to permit the use of removal encapsulants. The fact that the U.S. Air Force has approved BWE's product for use, or that the U.S. Department of Energy now prescribes the use of BWE's product when asbestos is removed from nuclear power plants, was apparently of little or no significance to the EPA.

In February of this year, a technical paper presented at the National Asbestos Council annual meeting outlined the successful removal of amosite asbestos using the BWE removal encapsulant instead of amended water. A copy of the technical paper was in the hands of EPA's Mayer on the day of its presentation, yet, to our knowledge, EPA has never communicated with the authors of the paper. In fact, EPA has not contacted any user of our client's product, even though they have had a list of those users since October, 1985.

In April of this year an independent environmental consulting firm conducted a comparative test of the BWE removal encapsulant and amended water. The test results, which are the subject of an article to be published in the August issue of Asbestos Abatement magazine, showed that the BWE removal encapsulant substantially outperformed amended water. Those results were communicated to Mr. Mayer by the president of the environmental consulting firm and by the undersigned. Again we asked Mr. Mayer for an EPA technical bulletin updating the Purple Book. This time the response was: "We do not have a technical problem with issuing an update, but I (Mr. Mayer) am leaving the EPA on July 15 and do not have time to get it done before I leave."

If, as EPA Administrator Thomas has said, there is no safe level of exposure to asbestos,

1. Why does EPA continue to recommend the use of an outmoded removal technology (amended water) which EPA itself says cannot be expected to produce acceptable asbestos fiber levels?
2. Why has EPA, for at least 8 months, ignored an advance in the state-of-the-art for asbestos removal?
3. Why has EPA staff failed to contact any of the users of this technology?
4. Why is there "not enough time" to issue a simple technical bulletin?

We do not know the answers to these questions, but we would hope that you and your committee might be able to help us get some answers.

As I indicated at the outset of this letter, BWE supports the action which would be mandated by S. 2083 and S. 2300, provided that this new removal technology is at least permitted by EPA. We would suggest that the references in both bills to EPA guidance documents ("most recent version" or "successor") be revised to include any technical bulletins or updates which might be issued by EPA. We would also suggest that the references to work practices, in Section 203(a)(2)(E) of S. 2083, and in Section 205(a)(2)(E) of S. 2300, be amended by inserting "or chemical removal encapsulants" following "amended water." In this manner you will insure that contractors will receive training on the more advanced, as well as the traditional, method of asbestos removal.

The Honorable Robert T. Stafford
June 12, 1986
Page Four

BWE appreciates the opportunity to comment upon these two important pieces of legislation and we ask that this letter be made a part of the subcommittee record. We will keep your staff advised of our progress, or lack thereof, with the EPA.

Respectfully,

C. Michael Deese

cc: Senator James Abdnor
Senator David F. Durenberger

CMD:aj

HELEN BRUNSON

5/9/86

Dear Mr Outen

I understand that you are going to be holding hearings on bills relating to people developing Mesothelioma from asbestos in the schools

My daughter, Carol Brunson Goodman died at the age of 35 as a result of cancer caused from asbestos. She was in the school system in Palm Beach County and Dade County for about 10 years

I have been employed in Palm Beach County as a teacher since 1966. I would like to make it known that to my knowledge that no teacher has ever been notified about the warning of the schools for the presence of asbestos.

I have been teaching at Jefferson Davis Middle School since 1972. I have never received any information on this subject in writing nor has it ever been discussed at a faculty meeting or at any other meeting held in our school.

I didn't know anything was being done about this problem until I was contacted by an outside source who knew about my

HELEN BRUNSON

daughter's death. I want to do whatever I can to inform my fellow teachers and our CTA about the situation.

I want to do whatever I can to expedite the removal of asbestos as soon as possible in our schools.

My daughter left 2 girls 5 + 8 years old and a husband who has been bravely trying to hold things together.

Needless to say I could become very emotional about this. It angers me to feel that people can be so heartless.

I am very thankful that you, Mr. Carlen, are trying to do something.

I am anxiously waiting to hear from you.

Sincerely,

Helen Brunson

8410 West Lake Drive
West Palm Beach, Fl. 33406

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STATEMENT OF

THE BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL

ON

FEDERAL BUILDING ASBESTOS HAZARD ABATEMENT ACT OF 1986

(S. 2300)

SUBMITTED BY

ALLAN S. BISK, CHAIRMAN

GOVERNMENT AFFAIRS DIVISION

TO

THE SUBCOMMITTEE ON TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT

OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

UNITED STATES SENATE

May 15, 1986

SUMMARY STATEMENT

The Building Owners and Managers Association International (BOMA) applauds the efforts of the Chairman and the Committee on Environment and Public Works in drafting Senate Bill 2300, the "Federal Building Asbestos Hazard Abatement Act of 1986." We appreciate your efforts to give positive federal guidance to building owners attempting to deal with the issue of asbestos in buildings. It is our hope that this bill will serve as a unifying mechanism in an arena of disparate remedies.

In reviewing S. 2300, we believe there are issues that must be considered. BOMA has studied the problem of asbestos in buildings for nearly six years. Evidence suggests that the mere presence of asbestos in a building does not necessarily pose potential hazards to tenants and employees. Even in the cases where hazardous friable asbestos is present in a building, research indicates that unless it is disturbed and entrained into the air, the potential health consequences appear to be negligible.

The health consequences of low level exposure remain unclear. The probability that asbestos fibers will be released into the air differs for each situation in every building. Air flow, ventilation rates and building configurations have unpredictable effects on fiber erosion and distribution.

Experts suggest that there is no "best" method for abating an asbestos hazard. Some abatement methods are controversial, creating potentially greater hazards. Even removal, often cited as the preferred method, may result in a more contaminated environment than if sound or friable asbestos applications were left undisturbed.

Knowledge of the potential hazard and technique for dealing with hazardous friable asbestos has improved. BOMA's efforts to inform and educate its members about asbestos have enabled owners to begin to deal with the issue. EPA's Guidance for Controlling Asbestos-Containing Materials in Buildings and other recent publications dealing with worker practices and disposal of asbestos materials have proven excellent resources for our industry.

Overzealous characterizations of the dangers of asbestos in buildings have heightened anxieties, leaving many with the perception that asbestos in buildings is a more critical issue than experts have proven it to be. These alarmist characterizations not only threaten the investments of billions of dollars in real estate from public, private and union pension funds, insurance companies and others, but could lead to ill conceived and hastily adopted regulations and abatement activities resulting in a greater threat to the public.

Building owners and managers find themselves in a dilemma. Some public health groups press for asbestos removal regardless of the facts or increased risk during removal. Owners' fears of litigation and liability losses both encourage and discourage abatement. A sensible, economically feasible and safe approach to the issue is needed.

BOMA supports in principle S. 2300's prescription that buildings should be inspected for asbestos under strict federal guidelines, by certified experienced design professionals.

An appropriate juncture for inspections would be during renovation or alteration planning. Arbitrary and needless inspections for private buildings prior to seeking a building permit for renovations would be unproductive. Each building is unique in design and construction and thus may require detailed facility survey inspections by design professionals. Air monitoring, an appropriate element of the inspection process is not adequate to illustrate and detail the full picture. An abatement project handled during renovation would be far more efficient, cost effective and involve the least health risk to tenants and employees.

It is our contention that inspection and removal programs are best implemented at the time building altertion permits are applied for. With federal guidance, local building departments and code enforcement officials could enforce the inspection program. Local code officials have direct contact with each and every building within their jurisdiction. With proper training, these officials are best suited to administer inspection and removal programs. This type of assessment and abatement program, already adopted by the City of New York with input from the real estate community, would allow the owner to budget properly, causing significantly less economic and tenant disruption.

BOMA believes that the decision to abate or manage asbestos in buildings should continue to be handled on a case-by-case basis. The Federal Government, through EPA, should continue to assist private and public sector building owners by developing sensible criteria for assessing buildings and the implementation of abatement and management programs, including the establishment of federal criteria of asbestos contractor, consultant and design professional certification.

TESTIMONY OF
THE BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL
ON THE
FEDERAL BUILDING ASBESTOS HAZARD ABATEMENT ACT OF 1986

SUBMITTED BY

ALLAN S. BISK, CHAIRMAN

GOVERNMENT AFFAIRS DIVISION

TO

THE SUBCOMMITTEE ON TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT

OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

OF THE

UNITED STATES SENATE

MAY 15, 1986

STATEMENT

Introduction

I am Allan S. Bisk, Chairman, Government Affairs Division of the Building Owners and Managers Association International (BOMA). BOMA is an association of over 6,000 office building owners, managers, developers, investors, brokers and service companies who own, manage, and service over 2.4 billion square feet of office space, roughly 1/4 of the office space in North America.

As Senior Vice President of Rose Associates, a New York based development company, I have been involved in the operation of numerous commercial and residential buildings from Boston to Ft. Lauderdale. I am currently responsible for the management of over ten million square feet of office space.

I am pleased to have this opportunity to address the Committee on the issue of asbestos-containing materials in buildings as it relates to the "Federal Building Asbestos Hazard Abatement Act of 1986 (S. 2300)." Concerns about asbestos are shared by both public and private sector building owners and operators. I am pleased that S. 2300 is directed at both sectors. I believe our mutual concerns can be effectively addressed through sensible regulation, the interchange of information and other cooperative activities among government, industry, and the research community.

Asbestos in Buildings

The Situation

The hazards of long-term exposure of asbestos workers to high concentrations of airborne asbestos fibers has been documented, and methods have been devised to measure and abate this hazard. However, the hazards associated with the presence of hazardous friable asbestos in buildings and appropriate methods for dealing with this problem remain unclear.

Unclear Medical Consequences

Concentrations of asbestos fibers in office buildings are significantly lower than those shown to have caused disease in asbestos workers. At these lower concentrations, the medical consequences of exposure to asbestos is of "extremely low order" according to a 1985 report by the United Kingdom's Health and Safety Commission.

Further, the Ontario Royal Commission on Asbestos in its 1984 report stated: "Even a building whose air has a fibre level up to ten times greater than that found in typical outdoor air would create a risk of fatality that was less than one-fiftieth the risk of having a fatal automobile accident while driving to and from the building." The Royal Commission thus concluded:

> "(W)e deem the risk which asbestos poses to building occupants to be insignificant and therefore find that asbestos in building air will almost never pose a health hazard to building occupants."

Rapidly Evolving but Untested Abatement Technology

Abatement technology is evolving but is still in its infancy. There has been limited experience with the consequences of asbestos abatement, and some procedures advocated in the past have been shown to create more problems than they solved. For example, encapsulation of friable asbestos by spraying it with a coating was once seen as a widely applicable solution to the problem. Now, however, concerns have been raised that the weight of the encapsulant may cause the asbestos to "delaminate," pulling insulation down from the ceiling and releasing asbestos fibers into the air. Other concerns have been raised about the fire retarding, insulation, and smoke generation qualities of encapsulants.

Removal theoretically provides the best solution to the problem. However, in addition to being extremely expensive, if done improperly it also can exacerbate the problem. In an extreme case, incompetent asbestos removal could make a building uninhabitable.

In buildings, there are many fibers other than asbestos in the air. Only electron microscopy can distinguish asbestos from other fibers. Unfortunately, electron microscopy is available only from a limited number of laboratories and is extremely expensive. Furthermore, the interpretation of the results is often controversial.

BOMA Activity

BOMA's objectives in dealing with asbestos in buildings are to protect our tenants and employees, employ sensible, professional operations and maintenance strategies and avoid counterproductive or unnecessary action. The Environmental Protection Agency has played a constructive role in assisting us in accomplishing these objectives. In particular, EPA's documents "Guidance for Controlling Asbestos-Containing Materials in Buildings," "Asbestos Waste Management Guidance: Generation, Transport and Disposal," and "Asbestos in Buildings, Guidance for Service and Maintenance Personnel" have provided our industry with useful tools for understanding and coping with the situtation.

BOMA has initiated several opportunities to inform and educate its members about asbestos. We have held seminars at our annual convention, published articles in our monthly publication, Skylines, publicized and encouraged attendance of members at workshops sponsored by Georgia Institute of Technology, University of Kansas and others. We have distributed the EPA's guidance documents, the National Bureau of Standards abatement guidelines and participated in the preparation of the National Institute of Building Sciences Model Guide Specifications for Asbestos Abatement in Buildings.

BOMA Position

We believe that legislation should set forth the following:

1. Provide minimum safety standards associated with the levels of airborne asbestos that will assure the public, tenants and employees of a safe environment.

2. Provide an appropriate definition for hazardous friable asbestos consistent with epidemiological findings relative to the low levels of exposure found in buildings.

3. Provide for an achievable post-abatement air standard recognizing the availability of the technology.

4. Establish an EPA asbestos training program for asbestos contractors, consultants and design professionals and require certification of those professionals based on competency and satisfactory completion.

5. Require the inspection and assessment of buildings at the time of building renovations or improvements. Inspection and assessment procedures should be coordinated through the building department when renovation permits are obtained. Inspections and assessments should be accomplished by a certified design professional and reported to and accepted by the appropriate local building official.

6. Require that copies of reports and the asbestos management plans be kept with the building management. They should be provided to tenants and guests upon request as with other building certificates. BOMA opposes the posting of warning labels that may foster hysteria throughout a building's occupancy.

7. Require that the Federal Government seek appropriate remedies for the current liability crisis facing building owners, design professionals and abatement contractors which has jeopardized necessary inspection and abatement activities nationwide.

8. Provide incentives for government, industry, and universities to research and improve assessment and abatement technologies.

9. Continue the technical assistance and information exchange now available to building owners through EPA regional asbestos coordinators and the three EPA approved asbestos training centers.

10. Require Federal Government leasing and space acquisition policy to be consistent with inspection and management provisions required for the entire building community.

Conclusion

BOMA supports practical, consistent, economic, and well thought-out regulations governing the inspection, maintenance and abatement of asbestos in buildings. We will continue to keep our membership informed on the issue of asbestos. We appreciate the opportunity to testify before the Committee and look forward to working with Congress, EPA and others as government and the marketplace strive toward finding a solution to the problem of asbestos in buildings.

COUNCIL FOR AMERICAN
PRIVATE EDUCATION
1625 Eye Street, N.W. Washington, D.C. 20006

(202) 659-0016
Robert L. Smith
Executive Director

June 16, 1986

The Honorable David Durenberger
Chairman
Senate Environment and Public Works
Subcommittee on Toxic Substances and Environmental Oversight
406 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing on behalf of the Council for American Private Education (CAPE) to express its views and concerns on legislation pending in the Subcommittee dealing with the serious problem of asbestos in our nation's schools and other public buildings. CAPE represents 15 national private school organizations whose schools enroll approximately 80% of all private school students. CAPE wholeheartedly supports the objectives of S.2083.

Asbestos is one of the most difficult problems facing educational institutions today. The fact that children spend a large percentage of their time at school underscores the need for vigilance by school officials to provide a safe, secure environment. CAPE's member organizations agree with the National Committee on School Health Policies' statement that, "The authority which requires pupils to attend school implies the responsibility to provide an environment as evocative as possible of growth, learning and health."

Widespread use of asbestos, along with complicated and expensive removal or abatement procedures, have created serious problems for school officials. The problem, however, cannot be ignored. The most recent studies conducted by the Federal government estimate that nearly 15 million children and 1.4 million school employees are potentially at risk because they occupy buildings that contain friable asbestos materials.

The approach in the bill (S.2083) reflects the concern of members of the Environment and Public Works Committee as well as many others in Congress about this health problem plaguing our nation's schools. We support the provisions to set standards for abating the asbestos hazard in schools through safe and effective abatement procedures, to set up a model contractor certification program to address the problem of improper abatement methods that in the the past increased the danger of asbestos contamination, and to require schools to inspect for asbestos if they have not already done so. In addition, we support the creation of a revolving fund for the existing Asbestos School Hazard Abatement Act (ASHAA) grant and loan program. The provision to mandate the abatement of asbestos in schools has enormous economic consequences for those responsible for carrying out the requirements of the bill. We cannot emphasize enough that if schools are mandated to remove hazardous asbestos, that the resources from the federal, state and local level must be made available in closer proportion to the school's need. Surveys by the General Accounting Office and education associations show that the cost of asbestos clean-up in the nation's public and private schools is estimated between $1.5 and $2 billion. The Department of Education estimates that $3 billion is needed.

We appreciate the support and leadership which members of this Committee gave in 1984 to the passage of the Asbestos School Hazard Abatement Act. While the loan and grant program has been funded at only half of its authorized level, it has provided some economic relief to a number of schools with the greatest financial need and with the most serious health hazards. However, in the first year of the program, EPA was able to provide only one-tenth of the amount of funding requested and the number of applications does not represent the scope of the need. We will continue to work to have ASHAA funded at its authorized level. We would hope and urge that if the pending legislation is enacted there will be a greater commitment by this Congress to fully fund the ASHAA program.

Maintaining a healthful environment in the nation's schools is not easy. It requires constant vigilance, financial resources and an active commitment by school communities. Although it may sometimes be difficult and expensive, we must make every effort to provide a safe environment for our students and teachers.

Mr. Chairman, we appreciate your work and the efforts of other Members of Congress in addressing the dangers related to asbestos exposure which threaten our nation's school children and personnel.

Thank you for this opportunity to provide our views to this Committee.

Respectfully submitted,

Robert L. Smith
Executive Director

Mrs. Francis J. Fleming
3203 Vassallo Ave.
Lake Worth, FL 33461

Senator Robert T. Stafford
United States Senate
Washington, D.C. 20510

May 10, 1986

Dear Senator Stafford,

It has come to my attention that you are going to be holding a hearing on bills related to asbestos in the schools. I would like you to make this letter a part of those hearings.

1. In 1980 or a few years earlier it was announced on television that "All Asbestos has been removed from all schools in Palm Beach County".

2. In the 1983/1984 school year my son and daughter were exposed to friable asbestos due to a two foot my three inch piece being cut out of an 85% Chrysotile Asbestos Pipe covering, located very near an air conditioning duct.

It was never covered over. Fibers were exposed. E.P.A. tells me this is one of the worst possible situations.

3. We as parents,(no P.T.A. at out school) were never notified of the "presence" of this hazardous asbestos in our school.

4. The PBCSD was found in violation of EPA's Identification and notification regulations.
   a) June 25,1984 -(Copy enclosed) but they were not fined, as the New Hampshire school district was, I complained to E.P.A. about this.
   b) Feb 8, 1985-EPA issued a complaint and notice of opportunity for hearing, and fined PBCSD $3,900 for violations in three more schools. There was a settlement with conditions dropping the fine.

I am aware of asbestos induced cancers in :
- A 27 year old women (Diagnosed mesotheliomia of the lung) which was traced back to her school exposure.
- a 28 year old doctor with peritioneal mesotheliomia traced to school exposure.
- a school principle who had cancer of the kidney (asbestos induced)
- a 38 year old teacher (deceased) with a diag. of mesotheliomia of the lung (asbestos induced).

As a mother and registered nurse, I am deeply concerned about the improper inspections and notifications, (or complete lack of same) in some districts throughout the U.S. If a wealthy district such as ours can commit such violations, it horrifies me to think of what is happening in poorer school districts.

Page 2.

I request that:

1. Please do whatever you can to strengthen the warnings and notifications rule 763.111 of E.P.A. regulations to include the exact wording below, in letter form addressed to each parent and/or anyone who may have been exposed:

"WARNING -friable asbestos, a cancer inducing substance has been found in our school. (this warning should give specific room numbers and or location as well as the exact location ex: on pipes)

2. School districts which have been in violation or did not comply with EPA's regulations warnings & notification rule by June 1983, should be made to warn there schood districts publically over T.V.,radio and newspapers and any other means available,so that former students of schools found to contain friable asbestos can be made aware of their exposure to friable asbestos. This statement should include the words warning, a list of the schools from which friable asbestos has been removed, and state that friabele asbestos can cause cancer.

3. I feel strongly that all school districts in the country should be reinspected in strict accordance with EPA laws.

Because friable asbestos cancers, that can be traced to exposures in schools, are showing up, I strongly urge every Senator, for the health and welfare of the young people of our country to support your bills.

Thank you for your devoted concerns and efforts.

Respectfully yours,

Mrs. Francis (Judy) J. Fleming

STATEMENT FOR THE RECORD

EDWARD E. SHEA

SENIOR VICE PRESIDENT, GENERAL COUNSEL AND SECRETARY

GAF CORPORATION

TOXIC SUBSTANCES AND ENVIRONMENTAL
OVERSIGHT SUBCOMMITTEE OF THE
COMMITTEE ON ENVIRONMENT AND
PUBLIC WORKS

HEARING ON S. 2083 AND S. 2300
CONCERNING ASBESTOS ABATEMENT
IN SCHOOLS AND PUBLIC BUILDINGS

MAY 15, 1986

STATEMENT FOR THE RECORD OF EDWARD E. SHEA

Senior Vice President, General Counsel and Secretary

GAF Corporation welcomes the opportunity to express its position on two bills pending before the Subcommittee: S. 2083, the "Asbestos Hazard Emergency Response Act," and S. 2300, the "Federal Building Asbestos Hazard Abatement Act." For the reasons set forth in this "Statement For The Record," GAF opposes both measures because they are unnecessary and might well threaten rather than protect the public health.

These legislative proposals are based upon the assumption that the public health is endangered by asbestos in buildings, but available scientific data does not support this assumption. In order to remedy the alleged health "emergency" which in fact does not exist, these measures would mandate the automatic application of rigid statutory standards for the identification and abatement of so-called "hazardous asbestos" nationwide, unless EPA issues such standards within 12 months. There are currently no direct scientific data upon which to base such standards, and the agency will thus almost certainly be unable to meet this deadline -- unless the agency acts arbitrarily and capriciously in promulgating such standards. Most important from a public health perspective, imposition of the statutory standards would likely result in large numbers of unnecessary and expensive asbestos removal projects which could create, rather than alleviate, any public health concern that might exist.

GAF recommends that the Subcommittee reject this unnecessary and unsupported legislation, and instead work to ensure that the necessary scientific studies are completed to provide a valid basis for determining under what circumstances, if any, asbestos in buildings actually presents any health risk which might necessitate so-called "abatement" action.

BACKGROUND

GAF, a diversified chemical manufacturer, merged with The Ruberoid Co., a well-respected manufacturer of building products, in 1967. Ruberoid was best-known for its roofing products, especially its rolled and built-up roofs. A portion of Ruberoid's business also included the manufacture of asbestos-containing insulation products. When GAF merged with Ruberoid in 1967, asbestos was still widely regarded as a beneficial substance when used properly.

Ruberoid had been a small supplier to the U.S. Government and its contract shipyards which demanded asbestos insulation in military and federal specifications and as an essential material under the Defense Production Act because of its excellent fire retardant, insulation and other qualities. After World War II, when certain types of imported asbestos were in short supply, the U.S. Government obtained and provided it to Ruberoid to make insulation products. The U.S. Government also contracted with Ruberoid to explore for asbestos in the United States because most asbestos, a natural mineral, is mined in Canada, Africa and other foreign nations.

Ruberoid itself handled asbestos in a safe manner. Management and employees worked with asbestos for decades, but experienced relatively few health claims. However, massive misuse of asbestos occurred in U.S. Government and contract shipyards. In the zeal to construct ships rapidly, many workers were subjected to massive or intense intermittent exposures to asbestos. Many such workers worked in enclosed areas with little or no ventilation. At the end of a workday, many were covered by asbestos from head to toe and were called "snowmen" by fellow workers. The conditions which the government allowed in these shipyards are entirely different than the regulated conditions in modern manufacturing plants and other occupational settings, let alone in schools and other public buildings, where the amount of airborne asbestos is infinitesimally small.

THE "BUILDINGS" VERSUS THE "BODILY INJURY" ASBESTOS-RELATED CLAIMS

The concerns that have arisen over asbestos-related health claims are in most senses totally unrelated to the subject of this proposed legislation. Over 99% of all asbestos-related health claims that have been presented in the United States over the past 15 years are related to occupational asbestos exposure that occurred literally decades ago, principally in the Government's own shipyards.*/ These occupation-related health claims -- relating solely to exposures occurring largely during World War II and the Korean War -- have absolutely nothing to do with building products that are contained -- in an encapsulated form -- in certain public buildings.

As discussed further below, the needless disturbance of asbestos in buildings is likely to result in a vast expenditure of funds, while contributing nothing to the public health. Indeed, existing studies demonstrate that asbestos concentrations actually rise in buildings after so-called "abatement" efforts -- above levels before the "abatement" efforts. Moreover, and most important for this Subcommittee's inquiry, the asbestos levels in the buildings subject to this Subcommittee's inquiry are far below any level that could cause any public health concern.

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*/ In 1969, GAF was named as a defendant in its first personal injury asbestos case. It received two cases in 1970; three in 1971; four in 1972; six in 1973; and seventeen in 1974. After 1978, asbestos litigation proliferated in the personal injury area. It is the government and government contract shipyard worker population that has been the source of the great majority of the asbestos health cases seen since 1969. Since 1969, over 40,000 personal injury asbestos-related health actions have been brought. In the same period, less than 200 asbestos-related cases have been brought making allegations concerning asbestos contained in public buildings. This is less than one-half of one percent of all asbestos-related health actions.

Furthermore, in recent years, as the cohort of workers exposed in government shipyards during World War II, the Korean War and into the 1950's has diminished, there has been a change in the types of claims being made. About two-thirds of the lawsuits in recent years are pleural thickening claims, *i.e.*, X-ray evidence is presented on behalf of a worker showing some thickening of the lining of the lung wall and the claim is based on fear of future serious illness. These cases are brought even though scientific evidence such as that described in the article, "The Pathogenesis of Asbestos-Associated Diseases" by John E. Craighead, M.D., and Brooke T. Mossman, Ph.D., of the University of Vermont College of Medicine Department of Pathology (*New England Journal of Medicine*, June 17, 1982, attached at Tab A)* shows that serious illness may develop, if at all, by other mechanisms. In some of these cases, the worker is not presently ill. In cases where illness exists, there is almost always evidence that smoking, emphysema, alcohol, obesity, age and other health problems caused or contributed to the worker's respiratory problem.

Thus, even in the occupational exposure, personal injury context -- which, as demonstrated, accounts for over

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*Retained in committee files.

99% of all asbestos-related health cases that have been brought -- there is overwhelming evidence that a majority of the cases assert alleged injuries that are more imagined than real. Furthermore, the scope of the litigation seems prompted more by the so-called "litigation explosion" that is the subject of the various proposals regarding tort reform, than by actual injuries. Finally, and most importantly, this vast majority of the cases, over 99%, involve occupational exposure over decades, with very high concentrations of asbestos (due to the Government's negligence in managing its shipyard and contract shipyard facilities). None of these factors is present in the buildings context, and thus the same public health concerns realistically do not exist.

DISCUSSION

1. The Proposed Legislation is Based on Unsupported Assumptions

The objective of the "Federal Building Asbestos Hazard Abatement Act" (S. 2300), as stated by Senator Stafford at the time he introduced the bill, is "to protect the public from an unseen but deadly health hazard -- airborne asbestos fibers in federal and other buildings". The assumption that the mere presence of asbestos-containing materials in buildings poses a significant public health risk underlies both this bill and S. 2083, the "Asbestos Hazard Emergency Response

Act". While protecting people from exposure to levels of airborne asbestos sufficient to cause disease is an unquestionable necessity, the assumption that the public health is in any way endangered by asbestos in buildings is unsupported by any significant epidemiological study, health claims history or other meaningful evidence.

2. Observed Illnesses Have Been Due to Massive Occupational Exposure and Other Factors Such as Smoking

The human respiratory system has natural biological mechanisms that operate to clear the lungs of asbestos fibers inhaled at low levels. John E. Craighead, M.D. and Brooke T. Mossman, Ph.D. of the University of Vermont College of Medicine Department of Pathology describe these mechanisms in an article published in the New England Journal of Medicine (June 17, 1982) entitled "The Pathogenesis of Asbestos-Associated Diseases" (see Tab A).* These authors estimate that only about one-third of inhaled fibers even reach the lungs at all. Of these, only about one-quarter are still there after one month. About half the fibers which reach the lungs are cleared within a few days.

The more that is learned about asbestos, the more it has become apparent that injury and illness due to asbestos exposure can occur in the respiratory system only when exposures are sufficiently massive and prolonged to overwhelm the body's natural defenses. It has also been established that other factors besides asbestos must almost always be present for asbestos-related cancers to develop, even in occupational situations where there was massive exposure. According to Craighead and Mossman, "Surveys of the smoking habits of insulators, factory workers, and miners and millers have consistently shown that bronchogenic carcinoma is uncommon in those who do not smoke. While there is only a slight increase in the prevalence of lung cancer among non-smokers, heavy users of cigarettes (those smoking more than 20 per day) have an 80-fold to 90-fold greater predisposition to cancer of the lung. At present, the mechanism of asbestos-associated carcinogenesis is unclear, although the mineral appears to act like a classic tumor promotor [sic]." The synergistic interaction between asbestos and tobacco smoke in producing cancers has also been well documented by others.

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*Retained in committee files.

Although smoking or non-smoking does not appear to have any effect on the development of pulmonary fibrosis (asbestosis), and the exact means by which asbestos fibers cause asbestosis is not yet known, Craighead and Mossman observe that "the question may be moot . . . since modern environmental controls have dramatically reduced exposure in the workplace. The dust concentrations permitted by current regulations will probably not induce substantial pulmonary fibrosis during the lifetime of an industrial worker".

3. The Levels of Exposure in Buildings Are Infinitesimally Low

Data reported by the Safe Building Alliance indicate that levels of airborne fibers found in buildings are typically extremely low. Their brochure entitled "Asbestos in Buildings" (attached at Tab B)*reports that "numerous studies, including those conducted by the EPA and the Ontario Royal Commission, have monitored asbestos levels in buildings constructed with these materials. In many cases, airborne levels have been so low as to be indistinguishable from outside air. In some, measurements show levels that exceed outside air levels by small amounts, and in only a few, measurements have significantly exceeded outside levels. But even at the highest levels, exposure is substantially lower than the Occupational Safety and Health Administration standards."

By way of comparison, the following representative average asbestos exposure levels are listed:

Unregulated Workplace (Historical)	20 or more f/cc
Workplaces Today	up to 2.0 f/cc
Typical Building With Asbestos-Containing Materials	up to 0.0009 f/cc
High Outside Air Readings	0.0007 f/cc
Outside Air	0.0004 f/cc

The Ontario Royal Commission study on Matters of Health and Safety Arising from the Use of Asbestos (1984)

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*Retained in committee files.

concluded that even in buildings containing "substantial" amounts of friable asbestos, actual levels of airborne asbestos fibers rarely exceed 0.001 fiber per cubic centimeter (f/cc). In an April 1985 report to the United Kingdom Health and Safety Commission called "Effects on Health of Exposure to Asbestos" (attached at Tab C),* Oxford University cancer researcher Sir Richard Doll and University of London asbestos cancer specialist Professor Julian Peto calculated that the level of asbestos fibers in buildings rarely exceeds 0.0005 f/cc of air.

4. There is No Evidence of Harm From Exposures at the Very Low Levels Estimated in Buildings

The average exposure levels in epidemiological studies which have found asbestos-related illnesses have been more than 10 times higher than current occupational standards and more than 10,000 times higher than average levels in schools as estimated by the Ontario Royal Commission. Despite the seemingly widespread public perception that the presence of even a single fiber of asbestos is a threat to human safety (the "one fiber can kill" argument described in "The Asbestos Hysteria" editorial attached at Tab D),* there is no valid basis for concluding, as S. 2083 and S. 2300 appear to do, that risk will occur at any exposure level, no matter how low, in direct proportion to the risk associated with high exposure. There is simply no proof whatsoever that exposure to the vanishingly small levels estimated to be present in schools and public buildings presents any risk of illness. After all, the entire population of the United States has experienced low level exposure to asbestos for many decades, not only because of its wide use as an industrial product but also because it is a natural mineral which is found even in forest areas, lakes and rivers. Examinations of normal lungs routinely reveal the presence of millions of asbestos fibers with no ill effects.

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*Retained in committee files.

5. Even Under Conservative Risk Assessment Assumptions, the Estimated Risk From Exposure to Very Low Levels of Asbestos is Negligible

In the absence of any direct evidence on the health effects of exposures at the levels estimated in buildings, various federal agencies and expert scientific bodies have proceeded to conduct risk assessments of such exposures, based upon extrapolation from the results of studies involving very high occupational exposures. These agencies and expert bodies universally acknowledge that these risk assessments are subject to substantial uncertainty. In addition, these risk assessments are based upon a number of "conservative" assumptions which are designed to estimate the "upper bound" of possible risk. One such assumption is that the dose-response relationship remains linear as the level of exposure is reduced from high occupational levels at which illness has been shown to low non-occupational levels at which there is no direct evidence of illness. In essence, the use of this assumption by definition predicts a risk at low exposure levels, and significantly overstates any risk that may in fact exist.

Even under this conservative methodology, however, the estimated risk from the very low levels of airborne asbestos found in buildings is negligible when compared to other risks which are part of normal life. Doll and Peto conclude that ". . . the environmental health risk from asbestos in buildings is of an extremely low order." They estimate that typical exposure levels would produce a lifetime cancer risk of but one chance in 100,000 for persons occupying a building containing friable asbestos for 20 years. According to these researchers, inhaling second-hand tobacco smoke for one hour per day produces a risk 90 times as great. Using the Ontario Royal Commission estimates developed under these same conservative assumptions, EPA estimated that the risk in attending a school with 0.001 f/cc average asbestos exposure for 10 years would be equivalent to smoking five cigarettes in a lifetime. The typical student would have to attend the typical school for 225 years for the risk of such exposure to be equivalent to that of breathing outside air for a lifetime. Tulane University School of Medicine researchers Janet M.

Hughes and Hans Weill, in an article entitled "Asbestos Exposure -- Quantitative Assessment of Risk", published in the American Review of Respiratory Diseases (1986), calculate that the estimated risk of asbestos-related disease due to exposure in schools and public buildings is several orders of magnitude less than the risks involved in whooping cough vaccinations, bicycling and high school football. This article is attached at Tab E.*

In other words, the estimated risks associated with low-level, non-occupational exposures to asbestos, even though significantly overstated because of the conservative assumptions under which they were developed, are much smaller than the common risks of everyday life.

CONCLUSIONS AND RECOMMENDATIONS:

1. There is No Need for the Proposed Legislation

Public policy decisions, as Hughes and Weill observe, ought to be scientifically defensible. Matching their own quantitative risk assessment against this standard, they found that, with respect to asbestos in schools, "decisions have been made without adequate consideration of the level of risk or the cost-effectiveness of attempts to lower the potential risk". GAF believes that S. 2083 and S. 2300, though well intentioned, would not only make the same mistake, but would exacerbate the consequences.

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*Retained in committee files.

At a time when budgets for so many necessities are being slashed, the U.S. government should not be mandating expensive solutions to non-existent problems based on fear generated by wholly different conditions which existed in shipyards during World War II and the war in Korea. There is no need for a federally-imposed program to identify and abate asbestos. Asbestos hazards have received publicity which is probably the most extensive for any known product. Across the nation, school administrators and public officials are already proceeding with programs to repair or remove asbestos-containing materials, even in situations where it does not present a real hazard.

2. The Proposed Bills Would Create Rather Than Alleviate Health Concerns

The mandatory federal programs contemplated by S. 2083 and S. 2300 would interfere with the efforts of local school administrators and public officials to adopt economical programs based on their actual needs. Since the broad-based epidemiological data which EPA needs to define exactly when low-level exposure to asbestos is hazardous are not yet available, the EPA cannot possibly promulgate standards within 180 days after enactment which are based on adequate scientific data. Once this deadline has been missed, standards set forth in the statute would automatically come into force. These standards would, in effect, define by statute the presence of a presumed health hazard where none actually exists, and, by doing so, divert limited financial resources away from solving real problems.

GAF is also concerned that imposition of these statutorily-prescribed standards would exacerbate overreactions based on fear and provide a vehicle for special interests to create artificial emergencies. This is likely to result in wholesale, unnecessary rip-outs of anything and everything containing asbestos -- an outcome which could aggravate rather than alleviate the problems which these bills purport to address.

Most experts believe that in the vast majority of cases, asbestos exposure in buildings may properly be controlled by a combination of inspections, proper maintenance procedures, and, when indicated, minor patching or repairs. Removal, the method that is, not surprisingly, most often recommended by asbestos abatement contractors, should be carried out only as a last resort. Unnecessary removals not only waste large sums of money but also may create health hazards where none existed before. It is well known that despite existing standards and regulations, a considerable number of asbestos removals are carried out improperly. This is likely to remain true to some degree despite the best intentions of the law. Since experience has already shown that even the best contractor certification programs and exposure level standards cannot, in and of themselves, ensure that major abatement and removal is performed in a manner safe for workers as well as building occupants, common sense dictates that removals be avoided unless they are necessitated by significant exposure levels. The most cost-effective and efficient way to reduce the number of improper removals is to reduce the number of unnecessary removals. The statutorily prescribed standards in S. 2083 and S. 2300 will place jurisdictions under great pressure to remove all asbestos-containing materials that are in anything less than perfect condition.

3. Federal Efforts Should Instead Be Focused on Further Studies to Assist States and Localities in Determining Whether Removal or Abatement Actions are Appropriate in Each Instance

In an article entitled "Living With Asbestos", (attached at Tab F)* which was published in Medical Health Annual as well as in the Encyclopedia Britannica (1986), NIH asbestos expert Ronald G. Crystal, M.D. observes that "currently, there is no evidence that the levels of airborne asbestos found in public buildings, such as schools, present a hazard. While it is rational to evaluate all public buildings to ensure that the levels are in the range that would yield 'low cumulative' exposures, there are no data to suggest that removal of asbestos from such buildings is necessary (though some schools have recently undertaken its removal) . . . . Outside of occupational exposures, unless there are specific circumstances in which the potential for cumulative exposures can be demonstrated to be above 'low' levels, the present data do not suggest that society is at risk."

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*Retained in committee files.

To the extent that asbestos in schools and public buildings actually needs repair or other remedial action, state and local governments already have the authority and the desire to act. Extensive information is already available to them from the EPA, and the Safe Building Alliance, as well as from state health and environmental agencies. The most useful action that the federal government could take would be to see that studies are completed which would enable state and local governments to accurately pinpoint those few instances where removal is necessary, and to select the most appropriate and cost-effective abatement strategy in other situations. To this end the EPA should be given adequate time and funding to undertake a broad-based low level exposure epidemiological study, through an independent organization such as the National Cancer Institute or the Chemical Industry Institute of Technology, before any mandatory program is undertaken. Such information is essential if decisions are to be made based on fact rather than fear.

GAF thanks the Subcommittee for the opportunity to explain the basis for its opposition to S. 2083 and S. 2300. For the reasons stated, these bills should both be rejected by this Subcommittee.

National Association of Asbestos Abatement Contractors
2020 K Street, N.W., Suite 800 • Washington, D.C. 20006 • (202) 296-8800

BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON TOXIC SUBSTANCES AND ENVIRONMENTAL OVERSIGHT
COMMENTS ON S. 2300

The National Association of Asbestos Abatement Contractors thanks the Committee for the opportunity to present comments on S. 2300. The NAAAC is an association of contractors who specialize in performing asbestos abatement work. The members of the NAAAC consider themselves to be responsible contractors who recognize that asbestos is a hazardous substance, and acknowledge a responsibility to their employees and the public to work in a safe and responsible manner.

The NAAAC was totally reorganized in the fall of 1985, and a meaningful contractor certification program was adopted as the keystone of the Association. Under the Association's certification program all NAAAC contractors, in order to remain members in good standing, must be certified in accordance with the Association's standards. Certification is performed annually for each contractor, and involves an on-site inspection by an independent industrial hygienist.

As contractors intimately involved with the asbestos abatement industry, we agree that certification of contractors who engage in this type of work is a way to protect both the public at large and employees who do the work. We also agree that certification should not be limited to contractors, but that as expressed in S. 2300, persons performing other functions integral to asbestos abatement, such as inspection, preparation of abatement plans, and laboratory analysis, should also be certified.

GENERAL COMMENTS

There is a need for certification or accreditation of contractors and other persons involved in the asbestos abatement industry. There are too many people in this industry who are either ignorant of how to properly perform asbestos abatement activities or who choose to perform work with less than adequate training and equipment or in an improper manner. The result is that workers and the public are exposed to hazards, unnecessary work may be performed, and hazardous situations are left uncorrected.

Failure to do the work properly is harmful not only to the workers who perform the work and the public and consumers whom the work is supposed to benefit, but is also detrimental to those in the industry who work as safe and responsible contractors. The good contractor as well as the bad suffers from the adverse publicity which slip-shod work brings to our industry. Furthermore, the good contractor and his employees lose work to those in the industry who do not invest adequate time and money in training, supervision, and equipment, and who are therefore able to work at lower prices.

A meaningful certification or accreditation program is one way to help protect employees, and assure the public that the work will be done properly. Essential to the concept, however, is the need to make sure that the certification or accreditation program that is adopted is a meaningful one, and that the standards upon which accreditation is founded are tough enough to provide real protection.

A certification program could actually do more harm than good if not based on standards which really assure that work will be performed in a safe and prudent manner. A weak program would have the unfortunate effect of creating a sense of security where no real protection is present.

In order to do what it is meant to do, we feel that a certification program for asbestos abatement contractors must meet three requirements. (1) It must be meaningful. On the basis of what we currently know about the dangers of asbestos and safe ways to handle it, certification should be based on criteria which provide reasonable assurance that work will be performed safely and that whatever hazards are inherent in the presence of asbestos will be removed. (2) A certification program must also be adaptable. As we learn more about asbestos and how to handle and control it, the definition of what are and are not acceptable contractor practices must change, and the criteria for certification must be updated. (3) And finally, a certification program must be realistic. Whereas standards must be tough to assure protection, they must nevertheless take into account what is possible and practicable given the truly enormous amount of work which must be done. Often what is possible in a laboratory setting cannot be duplicated in an on-site construction environment.

The NAAAC tried to take into account these three requirements in developing its own certification program. As such, we intend our program to identify contractors who perform asbestos abatement work the right way. At the same time, we intend for the standards against which our certification program is measured to change as we learn better ways to deal with the hazards of asbestos and the state of the art is improved.

Although we applaud the purposes of S. 2300, we are very concerned that the criteria upon which any certification program is ultimately based may not end up tough enough to assure real protection, or that once standards are adopted they will be difficult to amend. In order not to lose the opportunity to perform asbestos abatement work, there will be strong pressure by many groups to set standards as low as possible. We have already seen such efforts where states have or are trying to adopt some sort of standards. Furthermore, given the false sense of security which can result from watered-down criteria, it would not be fair to say that any standard is better than none.

A certification program can answer any or all of three questions. (1) Does a contractor know how to perform asbestos abatement work in a safe manner? (2) Does a contractor have the personnel and equipment to perform asbestos abatement work in a safe manner? (3) Does a contractor actually perform asbestos abatement work in a safe manner?

According to our reading of S. 2300, the definition of accreditation for contractors is aimed at providing an answer to only the first of these questions, but not the latter two. The obvious shortcoming is that a contractor may complete an EPA-approved training program or achieve a passing grade on the examination called for at Section 205(a)(2), but still not perform work in an acceptable manner. Additionally, once accredited, there is no provision to review or revoke accreditation.

In short, we believe that accreditation could be a useful tool to identify competent contractors and other persons involved in asbestos abatement, but we are skeptical that the standards will be tough enough to afford real protection.

SPECIFIC COMMENTS ON S. 2300

Section 204(c) requires the use of a scanning electron microscope (SEM) to determine fiber concentration. This is contrary to the practice in most labs which use transmission electron microscopes (TEM) for this purpose.

It is doubtful, even, that there are enough SEM's in use to cover the industry. Furthermore, there is authority to believe tht TEM methods are better than SEM methods for the quantitative analysis of airborne fibers in ambient air. We suggest that the statute should not specify the type of microscope to be used.

Section 208(a)(3) requires a building owner to either describe the criteria for selecting an abatement contractor, or, if a state accreditation plan has been adopted, state that such plan was followed in selecting a contractor. We suggest that this section be modified to simply require that only accredited contractors be used.

Section 208(b) requires a contractor to prepare or review each management plan and state that it complies with the requirements of Section 204. We suggest that this be broadened to permit preparation or review by any accredited person, not just contractors. In this regard, we query whether or not the proposed definition of "accredited asbestos contractor" at Section 203(6) is intended to include persons other than contractors who actually remove asbestos. If it is intended to include others involved with the abatement process, such as consultants and hygienists, it would be better to use the phrase "accredited asbestos persons."

Once again, we appreciate the chance to present our views to the Committee, and we hope the Committee and its staff will feel free to call on the NAAAC and its members for whatever assistance we can offer in dealing with this important matter.

Respectfully submitted,

NATIONAL ASSOCIATION OF
ASBESTOS ABATEMENT CONTRACTORS

May 14, 1986

NATIONAL ASSOCIATION *of* COUNTIES

440 First St. NW Washington DC 20001
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May 14, 1986

The Honorable David Durenberger
C/O Ronald B. Outen
Committee on Environment and
  Public Works
410 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Durenberger:

The National Association of Counties (NACo) is pleased to present this statement on S.2083--"The Asbestos Hazard Emergency Response Act of 1986"--for inclusion in the record of the forthcoming hearing on this important subject. We appreciate your courtesy in making this opportunity available to us.

NACo represents over 2,000 of America's county governments and their elected officials. Each of our member counties has a substantial interest in the health and welfare of its constituents and in the fiscal integrity of all local governments which share its revenue base. Thus, matters which impact upon the health and safety of school children and staff, or which involve potentially significant cost factors for schools, are of continuing concern to us.

In at least six states, NACo's involvement with the issue confronted in S.2083 is even more immediate and direct. In those states, county governments operate and fund school systems in a manner similar to the way other general county functions are handled. There is no independent educational unit of government at the local level.

The governing policy for the National Asssociation of Counties is contained in our American County Platform, which is adopted by our entire membership at our Annual Conference. Section 4.12.11 speaks directly to the question of school asbestos standards:

> The presence of asbestos containing materials in school buildings in hazardous to the health and well being of children. NACo encourages the federal government to develop school asbestos standards. In addition the federal government should make funds available to local school districts required to take corrective action with regard to the presence of friable asbestos in school buildings.

S. 2803 is a positive step toward implementing the policy urged by our Association. It contains many of the features we consider essential if the nation is to protect its school children against the harmful effects of friable asbestos. Because it parallels our policy, we welcome this laudable initiative and urge its favorable consideration by the Congress.

In lending our endorsement, however, it should be noted that the House counterpart to S. 2083 (HR 4311) was reviewed by the Education Subcommittee of NACo's Health and Education Steering Committee at our Legislative Conference which concluded on March 4, 1986. During that review, some reservation arose regarding costs which might be incurred by schools which have already made a good faith effort to eliminate their asbestos hazards. Should further remodeling or remedial actions be required to meet the new standards promulgated under the Act, it was felt that districts who have already attempted to comply should be afforded some relief against additional financial burdens. We would urge you to look at the possibility of providing grant assistance to this limited pool of affected schools and governmental units.

As an alternative, consideration might be given to possible loan forgiveness to the extent that it can be demonstrated that non-abatement costs associated with abatement of the hazard had been previously absorbed as part of abatement efforts exerted prior to the effective date of the Act. For example, remodeling structural changes necessitated by abatement (e.g., removal of a wall to gain access to asbestos) should not be imposed a second time because a standard has shifted. If a loan were taken out to assist with asbestos removal, provision could be made for discharging a portion of that indebtedness by verifying that certain costs were duplicative of earlier expenditures and not chargeable to an L.E.A. It is our understanding that this approach is under review in the House.

NACo does not believe voluntary and prompt response to federal mandates should be penalized by providing de facto rewards to those who deferred compliance efforts and thereby avoided an additional cost increment. Your attention to the "good faith effort" question would be sincerely appreciated.

We further believe that some provision should be made for extending deadlines for compliance in the event that the pool of loan monies is inadequate to meet the demand by schools needing financial assistance. As you well know, local governments in many areas are under severe budgetary strain and are hampered in their ability to increase revenues by taxpayer resistance and various legal restrictions. If loan funds are exhausted, it would seem unrealistic to adhere to original timelines and mandate compliance without affording schools the means to achieve the mandated actions.

These reservations are not fatal to S. 2083 from our perspective, but we do contend they merit further Congressional deliberation. We remain optimistic that a mechanism can be constructed which will avert what seems to us to be an undesirable and potentially adverse impact on schools which have met the spirit and intent of existing law.

NACo stands ready to work with you and your staff in perfecting S. 2083 and abating the hazard of asbestos in our schools. Please feel free to contact Jim Havel, NACo Health/Education Representative, for any assistance you may require.

Sincerely,

Robt. B. Aldemeyer

Robert B. Aldemeyer
President

RBA/ae

LEGISLATIVE INFORMATION

TESTIMONY OF THE
NATIONAL EDUCATION ASSOCIATION
ON THE
ASBESTOS HAZARD EMERGENCY RESPONSE ACT OF 1986
BEFORE THE
TOXIC SUBSTANCES AND ENVIROMENTAL OVERSIGHT SUBCOMMITTEE
U.S. SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

PRESENTED BY

RUBY KING-WILLIAMS

ASSISTANT EXECUTIVE DIRECTOR FOR PUBLIC AFFAIRS

NATIONAL EDUCATION ASSOCIATION

MAY 15, 1986

MARY HATWOOD FUTRELL, President • KEITH GEIGER, Vice President • ROXANNE E. BRADSHAW, Secretary-Treasurer
DON CAMERON, Executive Director
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Mr. Chairman and Members of the Committee:

My name is Ruby King-Williams. I am Assistant Executive Director for Public Affairs of the National Education Association. NEA's 1.8 million members are this nation's public school teachers, educational support employees, and vocational school, and higher education faculty and staff. NEA appreciates this opportunity to testify today on an issue that deeply touches the lives of some 14 million schoolchildren and 1.4 million school employees.

The widespread danger from the presence of asbestos in our nation's schools is clear. Today we are asking that you take a decisive step toward eliminating this danger by recommending passage of the Asbestos Hazard Emergency Response Act of 1986, S. 2083.

Last year, NEA testified before your full Committee and outlined the need for the Environmental Protection Agency (EPA) to establish uniform federal regulations by which all schools and institutions of higher education would be required to assess the degree of asbestos hazard and abate those problems effectively and permanently.

We are pleased to note that virtually every area of concern to NEA on this issue is included in the legislation introduced by Sen. Robert Stafford and Rep. James Florio, and we urge that this legislation be passed without any amendment which would relax those needed standards.

More recently, NEA testified to urge full funding for the Asbestos School Hazard Abatement Act. We commended the HUD-

Independent Agencies Appropriations Subcommittee for requiring EPA oversight over asbestos abatement projects funded with assistance from the federal government. And we strongly urge that these protections be extended to all asbestos abatement efforts in the schools.

A Look at the Hazards

The hazards of friable asbestos are welldocumented, and I don't believe that it is necessary to delineate all of the health consequences that result from exposure to asbestos. I would like to draw your attention to two points of fact: 1) asbestos exposure presents the greatest danger to young children, especially those between the ages of 5 to 10, and 2) some three-fourths of all public school districts in the United States have asbestos in at least one building as documented in separate surveys by the General Accounting Office and the NEA.

Children are more susceptible to asbestos-related diseases, primarily because they tend to be more active than adults, inhale and exhale more often, and characteristically breathe through their mouths, circumventing the body's normal nasal filtering system. In addition, children's higher rates of metabolism and cell development may increase their risk of developing an asbestos-related disease. Since most asbestos-related diseases take 15 to 40 years to manifest themselves, childhood exposure to asbestos can result in an individual being stricken in the prime of life.

The Need for Rigorous Investigation Standards

In 1979, EPA set up a technical assistance program to encourage schools to voluntarily identify and remove asbestos hazards. It also initiated formal rulemaking on asbestos in the schools that same year. Subsequently, EPA issued final rules requiring that by June, 1983, all public and private elementary and secondary schools inspect for asbestos, analyze any friable materials, and notify school employees and students' parents of the presence of any friable asbestos found.

Unfortunately, EPA has refused to issue regulations establishing clear standards for determining the hazards of asbestos and requiring abatement. This means that schools are required only to inspect for dangerous asbestos materials. Removal or abatement is still totally voluntary.

A November, 1983 memo from EPA's Regional Asbestos Coordinator in Region VII stated that ``At best, (EPA's inspection) rule is a dismal failure...Schools were not required to report anything to EPA making it impossible to even prioritize inspection targets.'' The memo further noted, ``A school can be in total Rule compliance and a hazardous exposure situation can still exist because the Rule requires no corrective action.''

Proper investigation techniques are absolutely critical to success in eradicating asbestos-related health hazards. Cursory investigations will not determine whether asbestos presents a hazard. The National Cancer Institute reports that analysis of actual tissue from dead asbestos-related cancer victims reveals that all asbestos fibers examined in the lung were less than 0.5

microns in diameter, and many of the testing procedures currently used cannot detect such small fibers.

Improper investigation, especially when performed by inexpert or unscrupulous contractors, can lead to a school district paying out hundreds of thousands of dollars for an unnecessary abatement project. Even more disturbing, improper investigation can lead to a school district unsuspectingly letting friable asbestos or invisible asbestos material continue to threaten lives and safety.

The Need for Rigorous Abatement Standards

In light of the known dangers asbestos presents, it is unfortunate that thousands of school districts can be aware of hazardous forms of asbestos in their school buildings and not take steps to correct the problem. In most cases, the school districts have not acted because they do not have adequate funds. In other cases, the EPA-required inspections may not have been properly conducted. In any event, clear standards for abatement are needed to see that adequate abatement measures are taken.

In the absence of sufficient guidelines, many school district officials have taken what they believe to be appropriate actions, but actions which did not avert the hazard. The GAO reported in March, 1985, that of the school distict officials polled 90 percent believed the abatement projects (removal, encapsulation, enclosure, or special operations and maintenance) in their districts were appropriate. On the other hand, only 54 percent of all state officials polled believed that asbestos abatement projects in school districts in their state were appropriate, and only 28 percent of the regional EPA officials believed that asbestos abatement projects in their region were appropriate.

Some school districts have -- on the advice of consultants -- decided to contain or encapsulate asbestos, only to discover that removal is the only safe course of action. Other school districts have taken on costly removal projects, only to discover that encapsulation would have been sufficient.

In addition to its information on the appropriateness of an abatement decision, the GAO reported that there were differing views on how well the abatement work was performed. Here 93 percent of the school districts believed the abatement work was performed satisfactorily, while state officials believed 34 percent of the work being done was satisfactory, and EPA officials believed 50 percent of the abatement work was satisfactory. In a separate survey of EPA Regional Asbestos Coordinators, EPA found that less than 25 percent of abatement projects were in keeping with EPA guidance.

In short, when one takes into consideration consultant fees, contractor costs, and construction costs, asbestos abatement is a very expensive -- but necessary -- undertaking. Given limited resources, it is important that school district and other responsible officials take action that is both appropriate and timely. Provisions in the Asbestos Hazard Emergency Response Act to establish standards for when asbetos presents a health hazard, to create state certification programs, and to require proper inspection would help address these concerns.

Horror Stories of Neglect

For a variety of reasons -- ignorance or denial of the hazards of asbestos, ignorance of proper testing and abatement procedures, fear of the loss of a school's reputation, difficult financial straits, etc. -- there have been a number of cases where school districts have taken improper action, or no action at all in dealing with asbestos.

NEA has received numerous firsthand accounts from our members telling of school district officials who were unwilling to face the need for proper asbestos abatement.

When the Hobart (Indiana) Teachers Association reported an asbestos problem to the Hobart School Corporation, school officials denied the existence of a problem. Even after the problem came to attention of the EPA, and the school was fined by EPA for noncompliance, Hobart school officials tried to hide the problem from school employees and the public.

In a similar case in Pennsylvania, the Brownsville Teachers Association went around school officials to gather ceiling samples for testing and found that five of the seven school buildings in that district had asbestos content ranging from 3 to 40 percent. Brownsville school officials continued to deny the existence of a problem, even after leaks in the ceiling produced dust which was later shown to contain 3 to 8 percent levels of asbestos. Even with such extremely harmful levels of airborne asbestos, the teachers association reported difficulty convincing the school board to close the school building.

Recommendations of Those Responsible for Asbestos Abatement

A number of officials responsible for abatement projects in the schools were polled by GAO. These officials had a number of recommendations:

o Require state certification of contractors and consultants;

o Establish an independent governmental unit to inspect abatement actions;

o Provide better technical guidance and assistance;

o Establish definitive standards for exposure levels that should be abated;

o Provide more information about asbestos hazards and remedies; and

o Increase federal funding for abating asbestos.

The Asbestos Hazard Emergency Response Act would address these concerns, and full funding of the Asbestos School Hazard Abatement Act would address the need for financial resources for school districts which would otherwise have extreme difficulty paying for necessary abatement projects.

Conclusion

Mr. Chairman and Members of the Committee, we commend those local and state officials who have taken voluntary action to deal with the hazards of asbestos in our nation's schools, but voluntary efforts are clearly not enough to permanently dispose of the problem.

We urge this Committee to recommend the passage of the Asbestos Hazard Emergency Response Act, so that the federal regulations necessary to govern the clean-up of our schools may be promulgated with all deliberate speed. We would see this not as an example of governmental intrusion in the schools, but as a relief and protection to the lives and health of our nation's youth.

Thank you

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Testimony by

THE NATIONAL PTA

Before the

Subcommittee on Toxic Substances

and Environmental Oversight

of the

Committee on Environment and Public Works

United States Senate

regarding

The Asbestos Hazard Emergency Response Act of 1986

S. 2083

by Arnold F. Fege

Director of Governmental Relations, National PTA

May 15, 1986

Mr. Chairman and distinguished members of the Senate Environment and Public Works Subcommittee on Toxic Substances and Environmental Oversight: my name is Arnold Fege, and I currently serve as the Director of Governmental Relations for the National PTA, representing 5.8 million parents, teachers, and concerned citizens around the nation. I appreciate this opportunity to appear before you this morning to share our views on S. 2083, the Asbestos Hazard Emergency Response Act of 1986.

The National PTA commends the Committee Chairman, Senator Stafford, on the introduction of this important legislation to address the life-threatening hazard of asbestos in our schools. The National PTA presented testimony before Chairman Stafford just over ten months ago on this issue. That testimony summarized the nature and extent of hazardous asbestos in schools, the history of EPA action (and, more often, inaction) with regard to those hazards, and the need for a Congressional initiative to bridge the gap between the sometimes helpful but, so far, quite limited efforts of EPA to address the asbestos in schools problem, and the effort actually needed to ensure that the nation's school children will be safe from deadly asbestos.

More specifically, that testimony expressed deep concern about schools' actions regarding asbestos: many schools' inspections had been incomplete: many schools that inspected for and found asbestos were not certain as to whether the asbestos was hazardous; even if schools knew that it was hazardous, they were not required to abate it: and many schools' attempts to abate the asbestos actually made the problem worse because of untrained and uncertified abatement contractors. The testimony also noted inadequate EPA response to these problems, and thus called upon Congress to respond to them.

S. 2083 would do just that. It would require the EPA to issue regulations setting standards for determining when asbestos is hazardous, mandating abatement of hazardous asbestos (through removal, enclosure, or encapsulation), and prescribing proper asbestos inspection, abatement, and disposal procedures. The bill would also require that states adopt asbestos worker certification plans, so that any inspection and abatement work would be performed by fully trained personnel. In addition, the bill would exempt risk retention groups and purchasing groups from state laws that would prevent the formation and operation of such groups to facilitate the insurability of asbestos abatement contractors. Finally, the bill would require schools to perform periodic reinspection of any asbestos that has not been removed; thus, any future asbestos hazards would be identified and abated immediately.

The National PTA understands that some may object to this vital legislation on the basis of its alleged requirements for excessive expenditures on asbestos inspection and abatement by Local Education Agencies (LEAs), most of whom claim to have already rid their schools of this highly toxic substance--in many cases, at great cost to local taxpayers.

This argument ignores two key facts regarding asbestos in schools. First, the bill would actually save some LEAs money. In the absence of federal standards regarding when asbestos may be considered hazardous and which type of action should be undertaken in different situations to abate hazardous asbestos, many LEAs, when pressured by local PTAs and employees regarding asbestos in their schools, have responded with large removal operations in situations where less costly abatement methods (or even no abatement action and periodic reinspection) would have been adequate to protect the health of building occupants.
S. 2083 would help to prevent such unnecessary expeditures by requiring EPA to set the necessary standards.

Second, there is a fundamental internal inconsistency in the argument that LEAs would be required to expend excessive amounts of financial resources to comply with the provisions of S. 2083 even if they had already properly inspected and eliminated all asbestos hazards in the schools. The bill provides that if inspections had been performed properly (presumably, by someone trained in asbestos identification) the inspections would not have to be redone. Further, if a school contains no hazardous asbestos, no abatement *need* be performed. Even if an asbestos hazard exists, an LEA may be able to adequately abate the hazard using a method other than (and less expensive than) removal. More importantly, if a school's inspection was *not* performed properly, or if an asbestos hazard *is* present in a school, then the bill *would* require some LEA expeditures, to ensure the health of school children and employees who could otherwise be exposed to asbestos hazards. Do the bill's detractors mean to suggest that LEAs should continue to allow school children and employees to be exposed to such deadly hazards? We sincerely hope that is not the case; but, if it is, that is all the more reason why this bill is needed.

As a former school official, I can personally relate to the difficult choices schools face in an era of declining financial resources; and as representative of the National PTA, I have strongly advocated federal assistance to LEAs for asbestos abatement through the Asbestos School Hazard Abatement Act. But it is time that abatement of hazardous asbestos be made a priority of LEAs around the country, and less coercive measures than S. 2083 over the last several years have clearly failed to accomplish that.

For too long, this nation has been aware that asbestos causes cancer and other fatal diseases, that asbestos is present in many school buildings, and that (even in small amounts) asbestos can harm our children. For years, national, state, and local PTAs have urged federal, state, and local agencies to address this problem, with only limited success (each level of government claiming it is the responsibility of the others). The National PTA can wait no longer. We support prompt enactment of S. 2083, which would be a critical step towards ridding our schools of all present and future asbestos hazards.

I thank you for this opportunity to present our views on S. 2083, and I would be happy to answer any questions that you may have.

NSBA
FEDERAL RELATIONS

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June 18, 1986

The Honorable Dave Durenberger
Chairman
Subcommittee on Toxic Substance and
Environmental Oversight
United States Senate
Washington, D.C. 20510

Dear Senator Durenberger:

The National School Boards Association (NSBA), representing over 95,000 local school board members nation-wide, is submitting comments for the record concerning S. 2083, the Asbestos Hazard Emergency Response Act which the Subcommittee on Toxic Substances and Environmental Oversight is currently considering.

NSBA has been greatly concerned with the problem of abating asbestos hazards in schools. It has worked to facilitate members' awareness of legislation and regulations dealing with asbestos. In particular, NSBA has been a supporter of the Asbestos in the Schools Hazard Abatement Act of 1984, which provides grants and loans to school boards for abatement projects.

NSBA is therefore supportive of the general concept of S. 2083, namely to provide additional guidance and resources to school boards in coping with asbestos hazards. Elements of the bill that offer significant help to school boards include the establishment of clear and reliable standards for identifying asbestos hazards and requiring the certification of abatement contractors.

However, NSBA also has serious concerns that the rigid regulatory structure of the bill will create severe administrative burdens and unnecessary costs to local school districts — burdens and costs that will divert scarce resources away from education programs and toward bureaucratic and wasteful compliance activities.

In particular, NSBA's concerns are:

- Regulatory Excess -- The bill sets forth detailed requirements for local asbestos management plans and requires state level approval and oversight of the plans. (Sections 204, 205, 206). These provisions assume non-compliance will prevail if rigid administrative procedures are not required. Overlooked are many strong incentives for school boards to abate asbestos hazards:

    - Over 96% of school board members are elected public officials accountable to the public.

    - The great majority of school board members have children in the public schools.

    - School boards are liable for damages for suits arising from asbestos exposure.

  These incentives combined with clear and reliable guidance for inspection and abatement, an adequate supply of qualified contractors, and sufficient funding will lead to more asbestos abatement at less cost than any system that creates a new asbestos abatement bureaucracy.

- Unrealistic Timelines -- The bill does not provide enough time for states to establish training programs before requiring local school districts to carry out inspections and draft management plans. Unrealistic, rigid timelines will lead to deficient inspection and abatement activities -- which the bill is seeking to correct.

- Inadequate Research Base -- The bill does not require the EPA to improve its data base before setting standards for asbestos risks in schools. What is the incidence of illness and death as a result of exposure to asbestos in schools? What circumstances definitely require asbestos abatement? What are the most cost effective abatement techniques? When do the risks of asbestos removel outweigh the risks of maintenance? When may asbestos safely be left in place?

- Mandatory Reinspection -- Many school districts have completed or are currently undertaking expensive inspection and abatement activities following EPA, state, or professional guidance. Requiring that new standards be applied retroactively creates a great potential for unnecessary expense and effort simply because past abatement activities are not documented according to the new compliance standards (Section 201, 205).

- Governor's Response Authority -- Authorizing the governor of a state to determine that a local school district is not taking sufficient action to abate hazardous asbestos undercuts the whole point of establishing clear and reliable national standards for abatement. This provision creates 50 potential standards for abatement at any one time and the possibility that the standards will change from one administration to the next (Section 207, 208).

NSBA urges the Subcommittee to eliminate these shortcomings in the bill by:

1) Simplifying asbestos management plans and keeping review procedures at the local level as much as possible to avoid the creation of a cumbersome asbestos abatement bureaucracy.

2) Giving school districts at least 2 years from the time EPA issues regulations to begin implementation of a plan. Specific schedules for abatement actions should be left to the local school board to work out reflecting the local situation.

3) Requiring EPA to convene a panel of experts to establish guidelines for determining asbestos hazards that require abatement and abatement techniques that are safe and cost effective.

4) Providing exemptions to EPA regulations for states that have adopted or will adopt equivalent asbestos inspection and abatement programs. Provide exemptions or partial exemptions for school districts that have inspected and/or abated in a manner that is substantially equivalent to the federal regulations.

5) Limiting penalties against school boards for non-compliance to $5,000 per day rather than the $25,000 now allowed under TSCA and dedicating the funds to abatement; eliminating the highly political EPA/Governor's Response Authority.

NSBA is also concerned that the deficit crisis in the federal government makes it unlikely that Congress will appropriate adequate funds to assist school districts with the inspection and abatement activities required by the bill. In the same spirit as your recently introduced bill, S. 2387, the Intergovernmental Regulatory Relief Act, NSBA feels strongly that Congress should not mandate new policies at the federal level and then shift the burden for implementing and financing them to the local level. The federal government should be a true partner in the effort to eliminate asbestos hazards if it is going to mandate abatement.

In conclusion, NSBA supports legislative concepts which facilitate the identification and abatement of asbestos hazards in schools. NSBA also strongly supports a federal role in funding abatement projects. However, we urge Congress not to create a costly and unnecessary asbestos abatement bureaucracy to do the job.

S. 2083 contains several provisions that would be helpful to districts such as a model plan for contractor certification, a contractor risk retention pool, and an Asbestos Abatement Trust Fund. NSBA looks forward to working with the Committee as it considers this legislation.

Very truly yours,

Nellie C. Weil

Nellie C. Weil
President

Tom Shannon

Thomas A. Shannon
Executive Director

NCW/TAS/dkt

Testimony on Senate Bill No. 2300
Submitted by The Real Estate Board of New York, Inc.
May 13, 1986
Position: Oppose

We submit this testimony on behalf of the over 5000 owner, manager and broker members of the Real Estate Board of New York, Inc.. While our organization is the industry association for those associated with the major ownership of office and multi-family residential buildings that are part of the Manhattan real estate market, many of our members are also affiliated with organizations that serve our country's major urban centers.

We commend the Senate Committee on the Environment for its efforts towards crafting a nationwide solution to the issue of asbestos. The presence of asbestos-containing products in many office and residential buildings is a foregone conclusion. Certainly those properties constructed or rehabilitated since the end of World War II have the material present in some form of pipe wrap or insulation. High rise office buildings constructed with structural steel are very likely to have asbestos-containing materials used as fire proofing and insulation.

The issue from a public health and safety perspective is what can be done based on what we now know about the potentially adverse health effects of airborne asbestos to assure that asbestos in place and stable, stays that way. In New York City, local legislation has been passed that we hope will develop a cadre of trained workers capable of following the EPA recommended method of removal. This local law, coupled with a state proposal that would require State certification of Contractors who hire such workers, could go a long way to ensure that whenever asbestos abatement takes place it is done in the safest known manner.

Senate 2300 has similar features that would enhance further the public safety whenever abatement work is required since it would expand the available pool of contractors able to work in New York City. It may interest you to know that in February 1985, there were only 72 known contractors prepared to handle asbestos in our large metropolitan area and of that group, many were so small that they had phone answering machines taking calls during the work day or did not answer the phone at all.

Since we did that initial survey of availability of contractors the situation has worsened because nearly all of the 72 known firms did not have their liability insurance renewed for this type of work as of 7/1/85.

In recent months we have tried to compile a list of companies doing asbestos abatement work for our members who are contemplating both large and small sized asbestos abatement jobs. In the course of this activity we have found a handful of firms capable of handling the work and properly insured -- none are located in New York City -- and none of them are prepared to come into the city to do a small job.

Difficulties encountered in proceeding with an asbestos abatement job don't end with the problem of a shortage of contractors holding liability insurance. The difficulties are further compounded by the lack of adequate disposal sites nearby. At the moment in the City of New York there is one local site capable of accepting asbestos, properly bagged. That site, on Staten Island, can take only four (4) truckloads a day on an appointment basis. Since asbestos removal, properly done, on even a small job, can generate much more than four truckloads -- (given the fact that one must bag not only the material containing asbestos but all the protective hangings, workmen's suits etc.) -- such a site is only marginally useful. The next nearest disposal site is in Buffalo, New York, several hundred miles from the City.

As we hope is apparent from the foregoing comments, the Real Estate Board of New York, Inc, is in favor of a sound asbestos management program in properties where the material is present. We have routinely recommended to our members that they know if the material is present and when it is, monitor its condition on a routine basis. We also urge our members to notify maintenance personnel routinely and outside contractors or repairpersons if they will be working in an area adjacent to the material in stable condition, to ensure that it is not disturbed.

The local law now in effect in New York City will require that after December 6, 1986, whenever an alteration is to be done, the filing with the City Department of Buildings notes whether or not the asbestos containing material is present in the area of work. If asbestos is present and it will be disturbed, the local Department of Environmental Protection will have to approve the methodology to be applied to such material prior to the work going forward.

What we have consistently opposed in our testimony before local government and must oppose in S 2300 is the manner in which the issue is presented to the public.

From the research we have done in consultation with environmental health experts across the country, we have learned that the asbestos-related health hazard in their view is limited to when the material becomes airborne, not to the stable material in place. What is needed is a public education campaign to that effect so that the public is not needlessly frightened, forcing precipitous removal which could endanger the public's health.

On this matter of frightening the public, we believe strongly that notification and posting requirements should be related to asbestos abatement work on the floor on which it is taking place so that the public does not inadvertently access such a worksite. We oppose the requirment of general notification or public posting of signs throughout a structure that identify the presence of the material per se.

We believe that the notification and posting requirements now found in S 2300 could lead to vandalism and potentially, to claims of constructive eviction and ensuing costly litigation.

Since S 2300 could affect all buildings if enacted, we urge this committee to reconsider those portions of the present proposal that we have highlighted in this testimony.

We would welcome the opportunity to appear before this committee in person if the asbestos handling problems we are experiencing in our area of the country can be utilized to craft a final proposal that will serve the entire nation's well being.

Thank you.

Safe Buildings Alliance

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TESTIMONY OF
JOHN F. WELCH, PRESIDENT
SAFE BUILDINGS ALLIANCE
ON S.2083 AND S.2300

BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON TOXIC SUBSTANCES AND
ENVIRONMENTAL OVERSIGHT

May 15, 1986

TESTIMONY OF
JOHN F. WELCH, PRESIDENT
SAFE BUILDINGS ALLIANCE
ON S.2083 AND S.2300

BEFORE THE UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON TOXIC SUBSTANCES AND
ENVIRONMENTAL OVERSIGHT

May 15, 1986

Thank you, Mr. Chairman. The Safe Buildings Alliance (SBA) -- an association of companies that formerly manufactured or whose subsidiaries formerly manufactured asbestos-containing materials for buildings -- is pleased to appear before this Subcommittee. SBA has, since its formation, shared the goals expressed in S. 2083, the Asbestos Hazard Emergency Response Act, and S.2300, the Federal Asbestos Hazard Abatement Act. SBA agrees with the finding that the schools of this nation are suffering from inadequate "regulatory guidance from the Environmental Protection Agency on whether actions [to address the presence of friable asbestos-containing materials in school buildings] are necessary, adequate or safe." SBA has been especially concerned, as are the authors of S.2083, that "some exposure actually may increase due to the lack of federal standards for asbestos exposure and abatement." (§ 201(a)(1).)

Like you, Senator Durenberger, we are very concerned that the need for better national guidance from EPA has left "schools ... uncertain about how to proceed." As Senator Stafford noted in introducing S. 2083, "too often, pressure from parents has forced school officials to remove asbestos that should have been left in place. Not only has money been spent needlessly, but in some cases, the danger has been increased by disturbing the asbestos." Cong. Rec. S. 1476 (February 20, 1986). SBA, therefore, looks forward to working closely with this Subcommittee to develop the best possible legislation to assure that clearer, more objective, scientifically-sound standards are developed by EPA for all the nation's schools. In my comments today, I would like to first address the deficiencies of S. 2083 and then comment on proposed S. 2300 which addresses not only schools but also all government and commercial buildings with friable asbestos-containing materials.

As I detailed in my testimony before the full Committee last July, numerous expert scientific reviews have concluded that the risk from the presence of friable asbestos-containing materials in buildings is in most cases insignificant. At the same time, these studies have concluded that significant exposures can occur if such materials are removed. The reports have also noted the need for initiation of operations and maintenance programs to assure that friable asbestos-containing materials are not unnecessarily disrupted, or when necessary repairs are made, not conducted without appropriate safeguards.

While strongly supporting the need for clearer, more objective standards by which building owners in this nation can make rational decisions on appropriate responses to the presence of asbestos-containing materials in their buildings, SBA cannot support S. 2083 as presently drafted. The bill contains crucial flaws that are likely to exacerbate the uncontrolled rush to remove all asbestos-containing materials, rather than to lead to the development of clear, objective standards.

Rather than adopting a rational statutory framework that would compel EPA to improve its existing, inadequate guidance to school boards, the bill is likely to perpetuate the inadequate guidance currently being offered by the Agency. Specifically, the bill indicates that enclosure, encapsulation, repair or removal of asbestos is to be required whenever asbestos-containing products or their coverings are "visibly damaged" or "readily accessible in a manner which presents a reasonable likelihood of human exposure to airborne asbestos fibers." (§ 202(b)(2) & (3).) EPA is required to enact such regulations within 180 days, and if it does not, a Congressionally-imposed standard is mandated requiring school buildings to abate asbestos in accordance with EPA's "Purple Book" Guidance for Controlling Asbestos-Containing Materials in Buildings.

Accordingly, the proposed legislation:

(1) Fails to recognize the central role of airborne monitoring as the best means of obtaining objective data for assessing whether asbestos-containing materials in buildings cause significant exposures to occupants;

(2) Fails to recognize that the "Purple Book," although providing a rough framework for building assessment, is still inadequate to constitute clear guidance for school boards faced with the difficult issue of choosing appropriate responses and communicating the effectiveness of such responses to the public;

(3) Provides no statutory criteria to guide EPA in developing better, clearer, more objective national standards; and

(4) Provides a great disincentive to embark on the difficult task of developing and refining national standards by imposing a Congressional "hammer" standard that goes into effect within 180 days if EPA does not first issue regulations.

The overwhelming scientific evidence indicates that the mere existence of asbestos-containing materials that are "visibly damaged" or "readily accessible" does not indicate that these materials are causing other than de minimis, near-ambient asbestos exposures in buildings. Nonetheless, a minor crack in a small portion of a ceiling could be, and no doubt often will be, considered evidence of physical damage; nearly any use of an asbestos-containing material on a ceiling or wall could be, and is likely to be, considered "readily accessible." SBA thus believes that the bill will result in a renewed rush to remove all asbestos-containing materials in the face of numerous scientific reviews indicating that such a result is the most dangerous possible response to the presence of friable asbestos-containing materials in buildings.

Because the bill would allow EPA not to act within 180 days -- a likely result given EPA's failure to develop better, more objective guidance over the past five years -- we fear that the legislation would result in a perpetuation of the inadequate guidance in the "Purple Book." SBA therefore urges this Committee to amend the bill to assure that it results in the clearer, more objective guidance that both we and Congress seek. Specifically, we believe that any legislation should:

(1) Separate clearly operations and maintenance and repair programs, which all experts agree should be adopted by all schools with friable asbestos-containing materials, from abatement actions (enclosure, encapsulation and removal) that are necessary and appropriate only in certain well-defined situations;

(2) Provide EPA with the Constitutionally-required statutory guidance for developing abatement standards, a goal best achieved by relying on the common sense criteria now found in Toxic Substances Control Act (TSCA) Section 6 criteria, which provide that any regulation is to be based on assessment of unreasonable risks and choice of the least burdensome solution;

(3) Include among the data to be employed in making decisions on whether abatement is required results of airborne asbestos monitoring; and

(4) Eliminating from the bill a Congressional hammer which is likely to serve only to discourage EPA from the necessary, difficult task of developing standards.

Although S. 2083 as presently drafted is likely to perpetuate the current lack of clear, objective guidance rather than spur the development of necessary unambiguous standards, it does contain one important provision that SBA strongly supports. The bill would require EPA to establish and implement contractor accreditation plans in all states. Such plans are badly needed to attempt to curtail poor abatement practices that often increase risks to abatement workers and building occupants alike. Contractor accreditation programs would benefit not only schools, but also all building owners, in assuring that any actions with respect to friable asbestos-containing materials are conducted by qualified personnel. A requirement that certification programs apply to abatement activities in all buildings is thus warranted and must be in place before any abatement actions are undertaken.

The proposal in S. 2300 to go beyond contractor certification in regulating all government and commercial buildings, however, does not represent sound public policy. EPA's resources should not be diverted from development of clear national standards for schools by a mandate to develop simultaneously standards for the much larger universe of much more diverse buildings addressed by S. 2300.

The dangerous situation created by precipitous removal of asbestos-containing products in schools should not be repeated in all buildings. Yet, any Federal legislation for all buildings prior to the development first of clear, objective standards for schools, is quite likely to precipitate a broader universe of dangerous and precipitous removal activity. Congress should be loathe to pass any bill, especially S. 2300, which shares the same flaws as S. 2083 with respect to assessment of appropriate responses to friable asbestos-containing materials, that would spark unwarranted removal activity in the nation's hundreds of thousands of Federal, state and commercial buildings.

Given the potentially enormous costs and likely counterproductive results of widespread removal, Federal legislation for all buildings would be unwise until EPA has developed clear standards for schools, contractor accreditation programs have been implemented, a large, well-trained cadre of inspectors, contractors, laboratories and project monitors put in place, and adequate enforcement personnel trained. National resources will be strained to achieve these goals for schools; only after the resources have been shown adequate to assess and respond to issues in schools is it wise to attempt in any way to expand Federal activities to a broader universe of buildings.

SBA looks forward to participating actively in the legislative process. We thank you for the opportunity to appear today and will be glad to work with the members of this

Subcommittee to seek the necessary improvements in any legislation to assure that our shared goal of development of clear, objective national standards is achieved as quickly as possible.

Safe Buildings Alliance

Suite 1200, Metropolitan Square
655 15th Street, N.W.
Washington, D.C. 20005

June 17, 1986

Dr. Ronald B. Outen
Senate Committee on Environment and
Public Works
SD-410 Dirksen Senate Office Building
Washington, DC 20510

Dear Ron:

Attached are responses to the questions raised in your letter of June 5, 1986. The Safe Buildings Alliance appreciates your cooperation in placing the responses in the hearing record.

If I can be of further assistance, please do not hesitate to call.

Very truly yours,

John F. Welch

John F. Welch
President

Attachment

RESPONSES TO QUESTIONS FROM SENATOR STAFFORD

1. I understand that your association represents several former manufacturers of asbestos-containing building products. Please provide a list of the members of your association and, for each company, a list of the types of asbestos-containing building products they manufactured and the years in which they incorporated asbestos into those products. Also please estimate the total share of the market for these products represented by your members, during the years in which they manufactured asbestos-containing products.

Members of the Safe Buildings Alliance (SBA) are Celotex Corporation, National Gypsum Company, Owens-Corning Fiberglas Corporation, United States Gypsum Company, and W. R. Grace & Company. SBA members or their subsidiaries manufactured and marketed in the past a variety of asbestos-containing building materials, including wall and ceiling surfacing materials, structural fireproofing, and pipe and boiler insulation. SBA has no information on the relevant market shares or the years of manufacture for those products.

2. In a hearing on asbestos in buildings on July 12, 1985, I asked you whether your member companies had taken any specific steps to locate and warn owners and managers of buildings containing their products about dangers that the asbestos-containing materials might present if improperly handled. You responded in the negative. Have any specific steps along these lines been undertaken in the ensuing year? Would your answer be any different today?

SBA member companies have through SBA, since its formation two years ago, viewed one of its principal purposes as the dissemination of responsible, scientifically-based information on asbestos in buildings. Over the past two years, we have shared with tens of thousands of building owners information on asbestos in buildings. SBA and member companies have distributed to many building owners copies of SBA's booklet, "What You Should Know About Asbestos in Buildings." We include a copy of that booklet for the Committee's information and for inclusion in the record of the Subcommittee hearing. In addition, SBA has provided information to many other building owners through its numerous presentations at meetings and seminars of various groups and in testimony and written comments to many legislatures and regulatory agencies throughout the United States.

3. In a press release you distributed at the hearing on May 15, you quoted me as saying that "in some cases, the danger [from asbestos exposure] has been increased by disturbing the asbestos." Then you went on to say that "the two proposed bills are likely to spark another rash of needless and dangerous asbestos removals." I am sure you know that a major purpose of the bills is to avoid unwarranted and inappropriate asbestos removal by requiring EPA to define in regulations, for the first time, circumstances that require abatement and those that do not. Please explain in detail why you believe my bills will have the opposite effect of what I intend.

As SBA explained in its written testimony, S. 2083 and S. 2300, as originally drafted, could lead to unwarranted abatement activity by classifying as "hazardous" and thus requiring removal, enclosure, encapsulation or repair of any friable asbestos-containing material that is "visibly damaged" or "readily accessible." The Environmental Protection Agency testified before the House Subcommittee on Commerce, Transportation and Tourism that this definition likely would find all asbestos-containing material in buildings to be "hazardous."

By indicating in no way how much damage is "visibly damaged" or how accessible is "readily accessible," the legislation would unwittingly classify any damage of any asbestos-containing material in any location that could be reached by touch or object to be a "hazardous" condition. Certainly, any wall or surface material is likely to have hairline cracks or indentations that could be considered "visibly damaged." Similarly, because objects or persons could touch any wall or surface, they could be considered "readily accessible." It is thus quite likely the legislative "standards" in S. 2083 would be interpreted to require unnecessary removal, enclosure, encapsulation or repair of any such materials.

Although the bill would allow repair responses -- and repair may well be the appropriate response for some damaged materials and thus would be included in a standard operations and maintenance program -- most instances of minor damage are very unlikely to pose any hazard. Moreover, one of the two conditions that is considered "hazardous" is any material that is "readily accessible." It would make no sense to repair such material if it is not damaged. In addition, the discussion in the bill of the need for post-abatement monitoring to assure proper procedures have been used is of little relevance to minor repairs that would not disrupt the material or release significant numbers of fibers. We thus believe that, although the bill provides for "repairs," its emphasis as written is on abatement by removal, enclosure or encapsulation. Such major abatement activity is far beyond what scientific experts throughout the world have found warranted to prevent significant exposures to school occupants, as discussed further in SBA's answer to the next question.

4. In your testimony, you criticize S. 2083 and S. 2300 for failing to require the use of ambient air monitoring to determine when asbestos abatement should be undertaken. As you know, I considered this proposal in considerable depth when developing the bills and rejected it because EPA and other technical experts believe it is technically unreliable and that no safe level of asbestos exposure can be established. I know that you are well aware of these technical objections.

Please list the various arguments against the use of air monitoring to decide where abatement is warranted and provide a detailed technical rebuttal to each objection. Also, please define what you believe a "safe level" to be, or explain how such a threshold level could be derived. Please be specific in your responses.

SBA continues to be concerned about EPA's failure to acknowledge fully the significant value of airborne monitoring as an important, objective tool in assessing the appropriate response action for the existence of friable asbestos-containing materials in buildings. Although EPA's latest guidance finds a role for such monitoring, it continues to discourage its greater use.

As best we can determine EPA's objections to airborne monitoring as an assessment tool, they are three in number:

(1) EPA argues in its Guidance for Asbestos-Containing Materials in Buildings that airborne asbestos monitoring "measures only current conditions and provides no information about fiber release potential and future air levels."

(2) EPA has also argued that airborne asbestos monitoring cannot capture peak exposure levels, for example, when basketballs are hitting an asbestos-containing ceiling in a gymnasium.

(3) EPA further argues that "implementing an effective monitoring program to measure current levels of airborne asbestos is difficult and can be expensive."

SBA finds none of these arguments have any substantial empirical basis.

First, although it may be true that airborne monitoring today cannot tell what exposure levels will be fifteen years from now, any such monitoring is likely to provide, if done competently, a very good indication of future exposure levels. Friable asbestos-containing materials were installed at least ten years ago. If those materials contribute to airborne exposure levels, they should be contributing to those levels today. No empirical evidence indicates that exposure levels increase over the life of the building.

Thus, whatever exposures exist today will not likely increase in the future. Further, to the extent materials are disrupted, continuing visual observation of the materials will reveal such disruption and, if such is the case, additional monitoring can be employed to determine whether this disruption has caused increased airborne exposure levels.

Second, the concept that airborne asbestos monitoring does not capture peak exposure levels is without foundation. Industrial hygienists have for years developed monitoring schemes to assure that representative values for contaminants are captured. The same representative sampling schemes can be employed for asbestos in building air. For example, if there is particular concern about exposures in a gymnasium during active use, the monitoring can and should be done during a period that accurately simulates such activities. It will thus record any such unusual peak exposures. If, on the other hand, such peaks are so rare that even a week of representative sampling does not capture them, they are very, very unlikely to contribute significantly to overall cumulative exposure. Moreover, if there is particular concern for any materials that might be disrupted under unusual circumstances, then special monitoring of those areas with such activity being simulated or duplicated with appropriate worker protection measures can and should be conducted to assure that any possibility of release of asbestos fibers is recorded.

Third, arguments concerning the expense of pre-abatement assessment monitoring issue have little merit. Every protocol EPA has proposed for post-abatement approval includes electron microscopy monitoring to assure that proper clean-up has occurred. It makes no sense to employ airborne monitoring after abatement if in fact airborne levels before abatement were so low that the significant risk and expense of major abatement can and should be avoided.

As former Assistant Administrator of the Occupational Safety and Health Administration, Dr. Morton Corn, stated just last month at the Cummings Memorial Lecture before the American Industrial Hygiene Conference:

> The lesson to the industrial hygiene profession is that we must always be alert and respond to obviously incorrect evaluations of some of the principal scientific tools of our profession. Our associations did not not challenge the EPA in its denigration of air sampling. Much to my dismay, some hygienists have appeared in court on behalf of plaintiffs to reiterate EPA's downgrading of air sampling as a scientific tool. It eludes me as to how these individuals can, on the one hand, repeat the EPA position and then on the other hand, proceed in their daily utilization of air sampling methods for assessment of airborne hazards in a large variety of other environments.

SBA believes that an acceptably safe level of exposure to asbestos in buildings can and does exist, as indicated by many experts throughout the world. Although SBA has not promoted any particular quantitative value, it believes that the expert opinion of review groups that the typical level in most buildings with friable asbestos-containing material poses no significant risk provides more than sufficient grounds for finding an acceptably safe level. As, for example, the Ontario Royal Commission on Asbestos found, the typical exposure level in buildings is less than 0.001 fibers/cubic centimeter and this level of exposure is "insignificant" to public health. Dr. Janet M. Hughes and Dr. Hans Weill of Tulane University School of Medicine recently concluded that the upper estimate risk from school asbestos exposure of 0.003 fibers/cubic centimeter would constitute an average annual death rate substantially less than rates for bicycling or whooping cough vaccinations. Similarly, the distinguished British experts at Oxford University, Professors Doll and Peto, in their report for the United Kingdom Health and Safety Executive found "negligible" risks in most buildings, which they indicated seldom had exposure levels of 0.0005 fibers/cc above background. These reports thus indicated airborne levels that were not zero were acceptably safe. SBA has summarized these findings in its booklet "What You Should Know About Asbestos in Buildings," which we are submitting with these responses for inclusion in the record of the Subcommittee's hearing.

SERVICE EMPLOYEES
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JOHN J. SWEENEY
INTERNATIONAL PRESIDENT

RICHARD W. CORDTZ
INTERNATIONAL SECRETARY TREASURER

TESTIMONY OF THE

SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

TOXIC SUBSTANCES AND ENVIRONMENTAL
OVERSIGHT SUBCOMMITTEE

U.S. SENATE

ON S.2083 AND S.2300
ASBESTOS IN SCHOOLS AND OTHER BUILDINGS

May 15, 1986

SUBMITTED BY:

Geri Palast
Legislative Director
Service Employees International Union, AFL-CIO, CLC

My name is Geri Palast and I am Legislative Director of the Service Employees International Union ("SEIU"); our union represents approximately 850,000 of America's service industry workers, including 100,000 school workers. Most of our members work in schools, hospitals and other public and commercial buildings -- in structures that are the heart of American life, but laced throughout with a substance that imperils it.

SEIU is here to urge quick action on the proposed legislation to require regulations for asbestos hazard abatement in the nation's schools and to set standards for identification and abatement of hazards in Federal and other buildings. The heart of the legislation would assure the provision of standards for action to correct asbestos hazard and require that proper corrective action be taken. This legislation would, in essence, merely fulfill commitments that were first made by the Federal Government in 1979, and are no less required today. The first piece of legislation would ensure protection of those who work and study in the Nation's schools; the second would extend this protection in an orderly fashion to those who live and work in hundreds of thousands of other buildings that contain asbestos hazard.

I do not have to tell this subcommittee about the hazards posed by friable asbestos in schools and public and commercial buildings. They have been most recently recognized by this Congress through the passage of the Asbestos in Schools Hazardous Abatement Act of 1984. 1/

In 1979, following a court suit, the United States Environmental Protection Agency ("EPA") agreed to develop, by 1980, rules to: (1) require schools to inspect for asbestos hazard; (2) require corrective action where hazard exists; and (3) consider the extension of schools rules to other public and commercial buildings. When EPA made its 1979 commitment, its best estimate was that friable asbestos was contained in approximately 10,000 schools housing 3,000,000 students. Today, EPA's "best estimate" is that asbestos was found in over 30,000 schools 2/ occupied by 15,000,000 students, and in over 700,000 other public and commercial buildings occupied by untold millions of Americans. EPA, however, has yet to fulfill its commitment of 1979.

1/ As an EPA research chief has written:

> "... asbestos is the pollutant of the century. Because of past exposures, an estimated 10,000 persons will die each year until the year 2000 from asbestos-related illnesses. Virtually nothing we do now will save these 200,000 people who have already been exposed. They will die horrible deaths from mesothelioma, lung cancer, asbestosis, and/or gastrointestinal cancers. New exposures must be adequately addressed."

2/ The estimate of schools at risk is terribly deficient. In particular, it does not reflect evidence of systematic failure to inspect boiler rooms, where asbestos is frequently present.

Since 1979, EPA has published "guidance" urging that "prudent" building owners (1) inspect for asbestos-containing materials; (2) take corrective action where asbestos is found; and (3) conduct periodic reinspections and special operations and maintenance until all asbestos-containing materials are safely and properly removed. In 1982 EPA issued a rule that required schools to conduct a single inspection by June 1983.

If it were clear that EPA's "guidance" and inspection rule were sufficient to ensure that needed action was taken, and taken properly, then legislation would be unnecessary. It is now tragically clear that EPA's program has not worked. Indeed, SEIU has discovered that EPA's own best expert judgment was that action under its program may have caused more cancers than it has prevented.

In November 1983 SEIU petitioned EPA (under the Citizens' Petition provision of the Toxic Substances Control Act) to initiate a rulemaking to complete its 1979 commitment to provide standards for corrective action and to require action when needed, and to provide rules to protect life during abatement.

In November 1984 EPA substantially denied SEIU's rulemaking request. 3/ In doing so it agreed with SEIU on the

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3/ EPA agreed that SEIU's request for rules to protect abatement workers and building occupants during abatement had merit, and promised further action by June 1985. In July 1985, EPA did propose an immediately effective rule to protect abatement workers; inexplicably, EPA has yet to fulfill its commitment to take parallel action to protect building occupants, or to explain why such a rule is not necessary.

hazard posed by asbestos, but claimed that rules were not needed because its program was meeting EPA's goal of "proper abatement" of hazard.

SEIU is now in court seeking an order that EPA complete its longstanding commitment to rulemaking. 4/ In court we have found confirmation that the need for EPA to fulfill its 1979 commitment is no less today than in 1979.

As detailed to you in our testimony last July, internal EPA documents obtained in our court case revealed two shocking developments. First, we found that while publicly proclaiming that its schools program was meeting its goal of proper abatement, EPA had withheld from the public its best expert judgment that less than 25% of school abatement projects were performed competently; EPA's experts knew that improper abatement was not only wasting scarce educational dollars, but could be increasing cancer risk. Second, we found that, while publicly denying the need for rulemaking, responsible EPA technical staff, and even the decisionmaker himself (the Assistant Administrator for Pesticides and Toxic Substances) were concluding internally that EPA should proceed with its longstanding rulemaking commitment. The proposed legislation would, in short, make good

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4/ The Court has not yet ruled on the merits of the case. Under the terms of the Toxic Substances Control Act ("TSCA"), the basis for our suit, the relief we seek is an order directing EPA to proceed with rulemaking. The present legislation would not only ensure that EPA proceed with rulemaking, but would require that rules are actually issued, and not permit further delay.

not only on EPA's 1979 commitment, but on a commitment whose need was internally reconfirmed by EPA experts one-half decade later. 5/

SEIU's analysis of numerous internal EPA documents and studies found that, 6/ after over one-half decade of activity under EPA's program, consisting of a "one-time" school inspection rule and "technical assistance" to dispense EPA's "guidance," EPA's best evidence is that large categories of risk remain. Thus:

5/ Thus, in a November 7, 1984, memo to EPA Deputy Administrator Alvin Alm, Dr. John Moore, EPA Assistant Administrator for Pesticides and Toxic Substances, recommended, consistent with analysis by his expert staff, that EPA issue an "abatement and inspection rule for schools" and proceed to gather information toward rulemaking for other "public buildings."

The "abatement and inspection" requirements that Dr. Moore recommended are substantially similar to those contained in the proposed legislation. Dr. Moore's memo explained:

> "OPTS [Office of Pesticides and Toxic Substances] recommends that the agency issue a rule requiring periodic reinspection and reporting for friable asbestos-containing materials in schools. If friable asbestos is found, schools would be required to develop and implement an abatement plan. Each school would be required to have an independent asbestos expert inspect and analyze the potential hazard presented by the asbestos according to standards or guidelines developed by EPA under the school assistance program. Contractor certification guidelines would be incorporated. The expert would also work with the school in developing and implementing the abatement plan."

6/ SEIU has provided the committee with SEIU court pleadings that provide supporting documentation for the conclusions stated above.

1. Most schools (over 50,000 of approximately 100,000) did not comply with EPA's inspection rule, and the best evidence shows systematic failure by schools to include boiler rooms as part of the inspection. Thus, there can be no assurance that all hazard has even been identified, and the best evidence is that thousands of schools missed boiler room asbestos.
2. Many schools may have taken some abatement action, but thousands have done so improperly, and many have increased risk. Thus, many schools who believe they have solved their problem may, in fact, have made matters worse.
3. Thousands of schools that contain potentially hazardous materials have taken no abatement action, or only incomplete action, and are not required to take abatement action under EPA's program.
4. Thousands of schools that still contain asbestos-containing materials may not be reinspecting or performing minimally necessary operations and maintenance, as provided by EPA guidance.
5. Thousands of schools do not know that they have acted improperly. They believe they have acted properly and are unaware of the need to take further action.
6. There is no evidence that any significant effort has been made even to identify, much less correct, hazard in the over 700,000 "other" (non-school) public and

commercial buildings which, by EPA's estimate, contain asbestos-containing materials.

All of the risks identified above, it should be emphasized, have persisted -- some have even been created -- despite over one-half decade of EPA "guidance" and "technical assistance."

As a representative of many thousands of building maintenance workers, I must emphasize how pervasively and nakedly exposed such workers are to outstanding risks.

While there is no known safe level of asbestos exposure, it is universally agreed that the most serious risk posed by asbestos in buildings is presented by "peak" exposures, which occur intermittently when friable asbestos is disturbed. Even if constant air monitoring were available, deadly peak exposures will, by definition, only be monitored after they have occurred. Peak exposures may be equivalent to those experienced in industrial settings. In issuing its inspection rule in 1982, EPA explained that common peak exposures may be "at least 1000 times higher than the prevalent levels" generally present in a school building with friable asbestos. 7/ (EPA further stated that

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7/ EPA further stated:

> EPA estimates that the prevailing exposure to asbestos in schools with friable asbestos-containing materials ranges from 57 to 270 nanograms per cubic meter (ng/m^3). Prevalent levels could become as high as 500 ng/m^3 as friable asbestos-containing material deteriorates or is damaged ...

[FOOTNOTE CONTINUED ON NEXT PAGE]

"[G]iven that these exposures are likely to be repetitive (unless proper precautions are taken), this mode of exposure may predominate.")

Ironically, although EPA recognizes the seriousness of hazard from peak exposures, its quantification of cancer risk from asbestos in buildings has admittedly not accounted for the effects of peak exposure. 8/

[FOOTNOTE CONTINUED FROM PRECEDING PAGE]

* * *

> Peaks up to 500,000 ng/m^3 may be common due to simple maintenance or to cleaning chores or to vandalism and other damage... This is a least 1000 times higher than the prevalent levels discussed above....

EPA stated that while it:

> ...has not been able to quantitatively estimate the contribution which peaks make to cumulative exposure among school children and teachers...
>
> ...peaks contribute significantly to exposure, even if they occur intermittently and for short periods.

See May 27, 1982 Federal Register, at pages 23,362-363.

8/ In proposing its inspection rule in 1980, for example, EPA stated (in the September 17, 1980, Federal Register at pages 61,970-71):

> EPA has refrained from attempting to quantify the total increased risks occurring from peak exposures because of the difficulty of estimating the frequency of disturbance to the material and the duration of peak airborne concentrations. However, EPA finds it reasonable to conclude that such activities may occur frequently and that, consequently, the risks of injury during these activities

[FOOTNOTE CONTINUED ON NEXT PAGE]

In untold thousands of buildings throughout the country, maintenance workers, including many thousands of SEIU members, engage in daily repair and maintenance that subjects them to potential for peak exposures. EPA, in agreeing to SEIU's request that it issue a rule to protect workers when they are performing abatement, has recognized that special procedures and precautions _must_ be taken where asbestos is worked with. Incredibly, there are no requirements that protect maintenance workers who come into daily contact with friable asbestos where abatement is not being undertaken. The proposed legislation, by requiring appropriate operations and maintenance plans and actions until asbestos is properly removed would, for the first time, provide some assurance that maintenance workers (and other building occupants) are protected in school buildings where complete and proper abatement has not yet been undertaken.

SEIU has been repeatedly advised by EPA that it is unreasonable for the public to ask for regulation because regulations cannot meet "cost/benefit" tests required in our budget-conscious age. The proposed legislation, however, does more than fulfill a longstanding commitment to protect the Nation's health; it fulfills a commitment that would make no less sense if measured solely by the concerns of our budget- and

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[FOOTNOTE CONTINUED FROM PRECEDING PAGE]
may be much greater than the risks from prevalent exposure.

As noted in footnote 7, a similar disclaimer accompanied the issuance of the inspection rule in 1982.

regulatory-conscious age. In the case of asbestos in buildings, there is no dispute that action should be taken and monies spent to address hazard; as an internal EPA "cost and effectiveness study," which EPA withheld from the public until discovered by SEIU in court, showed:

> "Clearly, the cost per cancer case [prevented] of asbestos abatement action in schools is low, even if we assume that a substantial number of abatement actions are done improperly." 9/

The issue, once again, is not whether money should be spent, but whether it will be well spent and reduce risk, or whether it will be poorly spent and actually increase it.

In enacting the Asbestos School Hazard Abatement Act of 1984 (ASHAA), Congress recognized that existing "guidance" is not being followed. ASHAA therefore provides for review procedures to ensure that corrective actions taken by schools who receive ASHAA financial assistance are both appropriate and properly performed. ASHAA will provide quality control in the case of (the minority of) schools that know they have a problem and are awarded Federal assistance; it does not ensure hazards will be properly addressed in schools that do not receive ASHAA funds,

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9/ The quotation appears in a June 8, 1984, memo from Dr. John Moore, EPA Assistant Administrator for Pesticides and Toxic Substances to Alvin Alm, EPA Deputy Administrator. The quotation referred to the results of a study prepared by an EPA contractor. It should be emphasized that "improper" abatement referenced by the quotation did not actively increase risk. (Rather, it failed to remove all hazard.) Obviously, the cost-benefit calculus changes dramatically where abatement activity is improper and increases risk.

many of which may not even know they have a problem. Congress can hardly have intended to create a two-track system in which beneficiaries of Federal funds will have assurance that a hazard is being properly dealt with, while the vast majority of students, teachers, and workers who fail to benefit from Federal financial assistance will, in the bargain, fail to benefit from rules to ensure that money is well spent and that cancer is prevented and not increased.

CONCLUSION

In our court discovery we found that, month after month, an EPA regional technical assistance person in Colorado began his reports with the statement that:

> "the pipes and boiler rooms at the start of the T.A.P.S. [Technical Assistance] Programs were put on the back burner; this is coming home to haunt us. This is a time bomb awaiting...."

(When we asked what EPA headquarters' reaction was to these repeated reports, we found that they probably had never been seen by EPA headquarters, at least until we asked for them in court discovery).

Our members work in the boiler rooms. We know that people who work in the boiler rooms are neglected. The "time bomb" of boiler room asbestos, however, "haunts" not only our members, but, as friable material filters throughout the schools, teachers, students, and other school employees as well. We fear, moreover, that if school boiler rooms have been too frequently neglected, the unidentified hazard must be far more pervasive in the hundreds of thousands of other (nonschool) public and commercial buildings in which we, and millions of other Americans, work and live.

We fear that in too many boiler rooms, time bombs have already exploded; even so, it is obvious that federal action today can help ensure that remaining time bombs are defused before they do damage to health and life that can be economically prevented in advance, but, in the case of the worst asbestos-related diseases, cannot be repaired by any amount of money after the damage is done.

Thank you.

Victor O
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Paul L. Genecki
Senior Vice President

May 12, 1986

Senator Robert T. Stafford, Chairman
Committee on Environment and Public Works
United States Senate
Dirksen Senate Office Building, Room 410
Washington, DC 20510

Re: Creation of Standards for Asbestos Abatement

Dear Mr. Chairman:

As Insurance consellors to the American Institute of Architects, we have been asked by its President, John A. Busby, Jr., FAIA, to comment on the effect on the availability of professional liability insurance for architects of the enactment of a bill creating or mandating the creation of reasonable standards for asbestos abatement.

One of the primary reasons for the lack of insurance coverage for asbestos abatement activities is the absence of standards acceptable to the courts, and others, by which performance can be measured. The absence of recognized standards, coupled with the imposition of new and novel theories of liability by the courts, has made it impossible to quantify the risks associated with asbestos abatement. If risks cannot be measured, losses cannot be predicted and insurance premiums cannot be forecast.

It is my opinion that the creation of such standards and their acceptance by the courts while adhering to traditional negligence standards to measure the performance of design professionals will vastly improve the likelihood of the availability of professional liability insurance for architects and engineers for services in connection with asbestos abatement.

INSURANCE

Victor O. Schinnerer & Company, Inc. is the Program Administrator and Underwriting Manager for the professional liability insuance program commended for architects and engineers and other design professionals by the American Institute of Architects and the National Society of Professional Engineers. Our firm has served as the professional liability insurance counsellor to AIA and NSPE since 1957. and we presently are the principal underwriting manager in the United States for professional liability insurance for architects and engineers. Currently, more than 8,000 design professional firms are insured in our program.

Since the late 1940's, all professions in the United States have seen a substantial increase in the claims made against their members for professional liability or malpractice. Professional liability claims have become a serious professional and financial problem for all professions, irrespective of whether legal liability ultimately is imposed.

Within the professional liability arena, there are three categories of exposure, or types of claims, that confront professionals:

1. Personal injury including bodily injury and death.
2. Damage to tangible property.
3. Intangible financial losses, such as loss of property rental income, loss of mortgage committments, and losses occasioned by increases in interest attributable to delays.

For hospitals, doctors, dentists, and other health care providers, the professional liability exposure is almost entirely bodily injury or death and usually involves but a single claimant. Lawyers and accountants have a professional liability exposure that usually encompasses intangible financial loss, and with the exception of SEC related matters, most often involves a sole claimant. Architects and engineers, however, regularly are confronted with professional liability claims involving multiple parties and arising out of any of these three categories of exposure.

Claims against design professionals alleging losses in all three categories are not atypical. This is the major distinction in the professional liability exposure facing engineers and architects as contrasted to all other classes of professionals. It is a unique and very complex exposure. In fact, in claims against design professionals, the cost of the investigation and defense can equal or exceed the original design cost of a project.

To date, the professional liability problem for architects and engineers has been especially complex owing to the wide variety of sources from which claims can arise. There are many influences which affect the design professional's daily practice in this regard. Professional liability claims against architects and engineers can result from alleged negligence in the project design or in the preparation of the drawings and specifications. They can arise from services performed during the construction phase while acting as the owner's agent; or from allegedly improper specifications for traditional products used in a new way without adequate testing; or from the increasing scope of government regulations such as building codes or standards, constantly changing and ambiguous environmental laws that are subject to after-the-fact interpretation, and regulations related to occupational safety; or from the constraints imposed by time and money which result in demands for accelerated completion; or, finally, from the changing attitudes of the courts and society in regard to the accountability of professionals for the consequences of their acts.

One way the insurance industry measures this professional liability problem is to look at the frequency of claims. Measuring that frequency in terms of numbers of claims per 100 architecture or engineering firms per year, our records indicated that the frequency in 1960 was 12.5 claims per 100 firms insured in the program which we manage. By 1978, that frequency rate had risen to 36.3 claims per 100 insured firms, and to 44.8 in 1980. The rate has held at 44 since then. Put another way, the "risk" probability is that close to one-half of all design professional firms will experience a professional liability claim in 1986. A majority of claims are disposed of without the need for any indemnity payment by the insurance companies, but the services of defense attorneys and expert witnesses, and the time spent by a design professional to establish a successful defense, can be extremely costly. This cost is usually borne by the architect or engineer under his insurance policy deductible or out of pocket. As can be seen, this overwhelming increase in claim frequency is a particularly acute problem for design professionals.

The other major perameter used to measure professional liability is the severity of claims. This quantifies the cost of claims. (Freqency quantifies the number of claims.) Starting at the same point used above to measure claim frequency, 1960, the value of an average claim $5,481. This amount is derived by dividing the total incurred loss by the total number of paid claims. This amount is in excess of the insureds' deductibles and reflects only the insurance company's claim experience in the first $1,000,000 layer of insurance. By 1978, the average claim had reached $43,659. When all of the 1985 claims have been reported and resolved, the actuaries tell us that the average will exceed $160,000.

The cost of professional liability insurance to an architect or engineer, in addition to their obligation to pay substantial deductibles, is somewhere in the range of 4% to more than 15% of gross billings. The cost of professional liability insurance, after personnel or salary costs, is the highest expense item for many design professionals.

It is important to understand how archtiects' professional liabililty insurance policies are written to understand the impact on design professionals. These insurance policies are written on a "claims-made" basis --- i.e., the insurance must be in force when the claim is made, irrespective of when the professional services were performed. And, these policies contain substantial deductibles on a per claim basis, which apply to both indemnity payments made to a claimant and to the investigative and legal costs incurred in defending against the claim. In many cases, an architect who is absolved of liability must pay thousands of dollars just to establish the successful defense. Under the insurance program for which we serve as the underwriting manager, the current minimum per claim deductible is $2,000. The most commonly carried deductibles are in the $5,000 to $10,000 range and higher. Rather obviously, any firm that has even a single claim is faced with a substantial financial exposure irrespective of insurance coverage.

Professional liability insurance for design professionals is not now, nor at any time in the past has it been, widely available. Within the insurance industry, it is considered to be a specialty type of insurance, and a very volatile one at that. Today, professional liability insurance for design professionals is written only by a few insurance companies, one of which is Continental Casualty Company, the company for whom we underwrite. Not all of these companies will write coverage in all geographic areas and some limit the availability of their coverage to firms conducting certain types of practices. As well, it must be recognized that a basic tenet of insurance is an ability to spread the risk over a large number of insured units. The total number of design firms practicing in the United States is relatively small and those which would render asbestos abatement services is very small. Thus, the base across which the risks inherent in asbestos abatement can be spread is quite small indeed.

In all of this, as well, the public has a vital interest. There can be little doubt that members of the public as well as professionals'clients are directly benefited by architects and engineers having financial resources in the event of a professional liability claim. If a person is injured or damaged by a design professional's negligence, there can be no meaningful recovery in the absence of insurance or personal assets.

If professional liabililty insurance is not available at any price or if a professional has chosen not to purchase professional liability insurance because of the expense, or has insufficient resources to pay the deductible, the injured parties, rather than the professional, will suffer the financial burden.

Despite all of the adverse developments over the past 29 years, including changing standards of practice, constantly expanding judicial interpretations of duties owed, dramatic increases in claim frequency and severity, and vastly increased expectations on the part of design professionals' clients, the professional liability insurance program we manage has been continuously available on a nationwide basis since 1957. Even today, we are confident that the professional liability risks of architects and engineers can be managed successfully and that professional liability insurance availability can be maintained to cover the vast majority of those risks. However, what cannot be managed is the uncertainty of underwriting results occasioned by liability that would be vastly expanded, at some point in the future, under new and unpredictable theories of law or by unforeseeable court decisions and awards resulting from the absence of standards by which performance can be judged.

In summary, it seems clear to us that the continued absence of standards for asbestos abatement will dictate the continued unavailability of professional liabililty insurance for this activity. On the other hand, it is our conclusion that if reasonable, universal standards are created and are accepted by the courts, and provided that traditional theories of negligence are not expanded, it will substantially hasten the time when professional liabililty insurance will again be available to architects and engineers who perform asbestos abatement services.

We appreciate this opportunity to present our views. We would welcome the opportunity to further discuss this matter with the Committee and its staff.

Very truly yours,

Paul L. Genecki

Paul L. Genecki

PLG:sgh
cc: John A. Busby, Jr., FAIA

99TH CONGRESS
2D SESSION

S. 2083

To amend the Toxic Substances Control Act to require the Environmental Protection Agency to set standards for identification and abatement of hazardous asbestos in the Nation's schools, to mandate abatement of hazardous asbestos in the Nation's schools in accordance with those standards, to require local educational agencies to prepare asbestos management plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 20 (legislative day, FEBRUARY 17), 1986

Mr. STAFFORD (for himself, Mr. MITCHELL, Mr. LAUTENBERG, Mr. BAUCUS, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Toxic Substances Control Act to require the Environmental Protection Agency to set standards for identification and abatement of hazardous asbestos in the Nation's schools, to mandate abatement of hazardous asbestos in the Nation's schools in accordance with those standards, to require local educational agencies to prepare asbestos management plans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Asbestos Hazard Emergency Response Act of 1986".

SEC. 2. AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

The Toxic Substances Control Act is amended by adding at the end the following:

"TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

"SEC. 201. CONGRESSIONAL FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds the following:

"(1) The Environmental Protection Agency's rule on inspection and notification of asbestos hazards has neither standards for the proper identification and abatement of hazardous asbestos, nor a requirement that hazardous asbestos be abated in a safe and complete manner once it is discovered. As a result, some schools have taken no action at all while many others have undertaken expensive abatement projects with no regulatory guidance from the Environmental Protection Agency on whether the actions are necessary, adequate, or safe. Thus, serious asbestos hazards continue to exist in schools, and some hazards actually may have been made worse due to the lack of national standards for asbestos hazards and abatement.

"(2) Because there are no Federal standards whatsoever regulating daily exposure to asbestos fibers in other public and commercial buildings, persons in addition to those comprising the Nation's school population may be exposed daily to hazardous asbestos.

"(b) PURPOSE.—The purpose of this title is to—

"(1) provide for the establishment of Federal standards for the identification and abatement of hazardous asbestos in the Nation's schools;

"(2) mandate safe and complete reinspection and abatement in accordance with those standards; and

"(3) require the Administrator to conduct a study to find out the extent of the danger to human health posed by asbestos in public and commercial buildings and the means to abate any such danger.

"SEC. 202. DEFINITION OF ASBESTOS; STANDARDS FOR ASBESTOS IDENTIFICATION AND ABATEMENT; MANDATORY ABATEMENT OF HAZARDOUS ASBESTOS.

"(a) ASBESTOS DEFINED.—

"(1) IN GENERAL.—For purposes of this title, the term 'asbestos' means—

"(A) friable asbestos, and

"(B) material which contains friable asbestos.

"(2) FRIABLE ASBESTOS.—For purposes of paragraph (1), the term 'friable asbestos' means—

"(A) chrysotile, amosite, or crocidolite, or

"(B) in fibrous form, tremolite, anthophyllite, or actinolite,

which can be crumbled, pulverized, or reduced to powder by hand pressure.

"(b) EPA REGULATIONS ON IDENTIFICATION AND ABATEMENT OF ASBESTOS.—Within 180 days after the date of the enactment of this title, the Administrator shall promulgate the following:

"(1) Regulations which prescribe procedures, including the use of trained personnel, for determining whether asbestos is present in a school building.

"(2) Regulations which prescribe standards for the circumstances in which the presence of asbestos in a school building shall be considered hazardous. In any standard under this paragraph, at a minimum asbestos shall be considered hazardous if the asbestos or its covering is—

"(A) visibly damaged, or

"(B) readily accessible in a manner which presents a reasonable likelihood of human exposure to airborne asbestos fibers.

"(3) Regulations which mandate abatement, in accordance with standards prescribed under paragraph (4), of hazardous asbestos found in any school building, as determined in accordance with standards prescribed under paragraphs (1) and (2). For purposes of this paragraph, 'abatement' means actions taken to eliminate the hazards posed by asbestos, including enclosure, encapsulation, repair, or removal.

"(4) Regulations which prescribe standards for performance of asbestos abatement activities in school buildings and for determination of when the hazard has been abated. Such regulations shall include standards for protection for both workers and building occupants, for the following phases of abatement activity:

"(A) Inspection.

"(B) Abatement.

"(C) Post-abatement, including any long term operation and maintenance activity.

"(5) Regulations which prescribe standards for performance of operation and maintenance for—

"(A) hazardous asbestos which is abated by a means other than removal, and

"(B) asbestos which is found not to be hazardous.

The regulations shall include provisions for the education and protection of employees who may come in contact with the asbestos, and for periodic reinspection of the asbestos.

"(6) Regulations which prescribe such standards for transportation and disposal of asbestos as may be necessary to protect human health and the environment.

"(c) HAZARDOUS ASBESTOS STANDARD IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsections (b) (1) and (2) within the prescribed period, any asbestos or its covering which exists in the school building shall be considered hazardous if the asbestos is visibly damaged, with portions of the material dislodged, missing, cracked, deteriorated, showing evidence of water damage, or flaking, in any area in the school building where there is a potential for human exposure, including an air plenum. Such standards shall be effective until such time as the Administrator promulgates different standards under regulations under subsections (b) (1) and (2).

"(d) ABATEMENT IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsections (b) (3) and (4) within the prescribed period, and asbestos which is hazardous under the standard described in subsection (c) exists in a school building, the local educational agency with jurisdiction over the school building shall abate such asbestos in accordance with the most recent version of the Environmental Protection

Agency's 'Guidance for Controlling Asbestos-Containing Materials in Buildings' (or any successor to such document). The ambient interior concentration of asbestos after the completion of abatement shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. In the absence of reliable measurements, the exterior ambient concentration shall be deemed to be less than 0.003 fibers per cubic centimeter. A scanning electron microscope shall be used to determine whether the standard has been met.

"(e) TRANSPORTATION AND DISPOSAL STANDARDS IF EPA FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsection (b)(6) within the prescribed period, any asbestos which is abated within a local educational agency shall be transported and disposed of in accordance with the most recent version of the Environmental Protection Agency's 'Asbestos Waste Management Guidance' (or any successor to such document).

"SEC. 203. MODEL CONTRACTOR ACCREDITATION PLAN.

"(a) MODEL PLAN.—

"(1) PERSONS TO BE ACCREDITED.—Within 180 days after the date of the enactment of this title, the Administrator shall develop a model accreditation plan for States to give accreditation to persons in the following 4 categories:

"(A) Persons who inspect for asbestos in schools within a covered local educational agency.

"(B) Persons who prepare management plans for such schools.

"(C) Persons who carry out abatement of asbestos in such schools.

"(D) Persons who analyze bulk samples and air samples of asbestos from such schools in laboratories.

"(2) PLAN REQUIREMENTS.—The plan shall include a requirement that any person in the categories listed in the preceding sentence achieve a passing grade on an examination and participate in continuing education to stay informed about current asbestos abatement technology. The examination shall demonstrate the knowledge of the person, and the knowledge of any of such person's employees, in areas that the Administrator prescribes in regulations as necessary and appropriate in each of the categories. Such regulations may include requirements for knowledge in the following areas:

"(A) Recognition of asbestos and its physical characteristics.

"(B) Health hazards of asbestos and the relationship between asbestos exposure and disease.

"(C) Assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos, friability, age, deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet methods of abatement.

"(D) Respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures.

"(E) Appropriate work practices and control methods including the use of high efficiency particle absolute vacuums, use of amended water, and principles of negative air pressure equipment use and procedures.

"(F) Preparing a work area for asbestos work, which would include isolating work areas to prevent bystander or public exposure, decontamination procedures, and procedures for dismantling work areas after completion of work.

"(G) Establishing emergency procedures to respond to sudden releases.

"(H) Air monitoring requirements and procedures.

"(I) Medical surveillance program requirements.

"(J) Proper job-specific work practices, including work area preparation, decontamination, emergency procedures, and waste disposal procedures.

"(K) Housekeeping and personal hygiene practices, including the necessity of showers, and procedures to prevent asbestos exposure to an employee's family.

"(b) STATE ADOPTION OF PLAN.—Within 180 days after the Administrator has developed a model contractor accreditation plan under subsection (a), each State shall adopt a contractor accreditation plan at least as stringent as that model.

"(c) CONTRACTOR IN STATE WHICH HAS NOT ADOPTED A PLAN.—Any person described in subsection (a)(1)—

"(1) who plans to carry out any activities described in subsection (a)(1),

"(2) more than 180 days after the Administrator has developed a model contractor accreditation plan under subsection (a),

"(3) in a State which has not adopted a plan under subsection (b), must be accredited by another State which has adopted such a plan under subsection (b) before carrying out any of the activities described in subsection (a)(1).

"(d) FINANCIAL ASSISTANCE CONTINGENT ON USE OF ACCREDITED PERSONS.—A school which is an applicant for financial assistance under section 505 of the Asbestos School Hazard Abatement Act of 1984 is not eligible for such assistance if the school uses any person described in subsection (a)(1) who has not been accredited under a plan based on the model plan developed under subsection (a). This subsection shall apply to any financial assistance provided under the Asbestos School Hazard Abatement Act of 1984 more than 240 days after the date of the enactment of this title.

"SEC. 204. STATE GOVERNOR ASBESTOS REVIEW.

"Within 90 days after the date of the enactment of this title, the Governor of each State shall establish administrative procedures for carrying out certain provisions described in sections 205 and 206. In establishing such procedures, the Governor shall designate to carry out the provisions those State officials who are responsible for implementing environmental protection or other public health program in the State. If the Governor of a State does not establish such procedures, the Administrator shall carry out the applicable provisions until such time as the Governor establishes such procedures.

"SEC. 205. CERTIFICATION OF SCHOOL INSPECTION AND ABATEMENT.

"(a) CERTIFICATION REQUIREMENT.—Within 180 days after the date of the enactment of this title, each local educational agency shall conduct a certification to determine the status of asbestos inspection and abatement in each school under its authority. A certification shall consist of submitting to the State Governor (or the Administrator if the Governor has no procedures established under section 204) a written statement, signed by the highest ranking responsible official of the local educational agency, which contains each of the following items:

"(1) For each school building, a statement on whether an inspection was conducted to ascertain the presence of any hazardous asbestos in the building, including a specific reference to whether an inspection was conducted in the boiler room of the building. If such an inspection was conducted, the following items of information shall be included in the statement:

"(A) The dates of inspection.

"(B) The name, address, and qualifications of each inspector.

"(C) A description of the specific areas inspected.

"(D) The name, address, and qualifications of each laboratory used for analyzing bulk samples or air samples of asbestos.

"(E) The results of the inspection.

"(2) For each school building, a statement on whether any actions to abate any hazardous asbestos found to be present were taken, including a specific reference to whether any actions were taken in the boiler room of the building. If any such abatement action was taken, the following items of information shall be included in the statement:

"(A) The location or locations at which the abatement action was taken.

"(B) Whether the method of abatement was removal, enclosure, or encapsulation.

"(C) The qualifications of the persons who conducted the abatement action.

"(b) PUBLIC AVAILABILITY OF CERTIFICATION.—A copy of the certification required under subsection (a) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

"SEC. 206. INSPECTION; ASBESTOS MANAGEMENT PLANS.

"(a) INSPECTION.—Within 120 days after the Administrator promulgates regulations under section 202, or, if the

Administrator fails to promulgate the regulations within the prescribed period under section 202, within 180 days after the end of such prescribed period, each covered local educational agency shall conduct an inspection for asbestos in each school under its authority. Each inspection shall comply with the regulations promulgated under section 202(b)(1).

"(b) MANAGEMENT PLAN.—

"(1) GENERAL REQUIREMENT.—Within 240 days after the Administrator promulgates regulations under section 202, or, if the Administrator fails to promulgate the regulations within the prescribed period under section 202, within 240 days after the end of such prescribed period, each covered local educational agency shall prepare and submit to the State Governor (or the Administrator if the Governor has no procedures established under section 204) a management plan for abating hazardous asbestos in school buildings under its authority. Each plan shall provide for compliance with the regulations prescribed by the Administrator under sections 202(b) (2), (3), (4), (5), and (6) (or if there are no regulations, the standards in subsections (c), (d), and (e) of section 202) and shall include the following:

"(A) A description of the results of the inspection conducted under subsection (a), including the dates of inspection; the names, addresses, and qualifications of inspectors; and a description of the specific areas inspected.

"(B) A detailed description of measures to be taken to abate any hazardous asbestos, including the location or locations at which an abatement action will be taken and the method or methods of abatement to be used.

"(C) An evaluation of resources needed to successfully complete abatement and carry out operation and maintenance.

"(D)(i) A detailed description of criteria and procedures which were followed in selecting the persons who inspected for asbestos and who analyzed the asbestos in laboratories, and which will be followed in selecting persons to abate the hazardous asbestos, or

"(ii) if the State has adopted a contractor accreditation plan similar to the model contractor accreditation plan developed under section 203, a statement that the local educational agency followed (or will follow) its plan in selecting such persons.

"(E) The names of the consultants who contributed to the plan, along with a description of their credentials.

"(F) A detailed description of any asbestos found in the school building which was found not to be hazardous under the regulations prescribed under subsection 202(b) (or the standard in subsection 202(c)) and which is not visibly damaged or flaking.

"(G) An operation and maintenance plan developed in accordance with standards prescribed under section 202(b)(5).

"(2) EXCEPTION FOR CERTAIN SCHOOLS.—If a covered local educational agency determines that a school under its authority—

"(A) conducted an inspection for asbestos which complied with the regulations promulgated under section 202(b)(1),

"(B) found asbestos, and

"(C) removed all the asbestos existing in that school,

the local educational agency may omit that school from the management plan but must include a statement in the plan explaining how that school identified the asbestos and removed all the asbestos from the school.

"(3) PLAN MAY BE SUBMITTED IN STAGES.—A covered local educational agency may submit a management plan in stages, with each submission of the agency covering only a portion of the school buildings under the agency's authority, if the agency determines that such action would expedite the identification and abatement of hazardous asbestos in the school buildings under the authority of the agency.

"(c) STATE, EPA ACTION.—The State Governor (or the Administrator) shall approve or disapprove a management plan submitted under this section within 90 days after the date of receipt of the plan. Approval shall be based on—

"(1) the degree to which the plan is suited to the problem identified;

"(2) its conformance with the model contractor accreditation plan developed under section 203;

"(3) its conformance with regulations under section 202(a) on asbestos inspection and abatement (or with the standards in sections 202(b) and (c) if there are no regulations); and

"(4) the reasonableness and timeliness of the abatement schedule, taking into account circumstances relevant to the speed at which the hazardous asbestos should be abated, including public exposure to the hazard while the asbestos remains unabated.

If the State Governor (or the Administrator) disapproves a plan, the State Governor (or the Administrator) shall explain in writing to the covered local educational agency the reasons why the plan was rejected and the changes that need to be made in the plan in order to receive approval. Within 30 days after the date on which notice is received of rejection of its plan, a covered local educational agency shall revise the plan to conform with the State Governor's (or the Administrator's) suggested changes.

"(d) LEA IMPLEMENTATION OF MANAGEMENT PLANS; CERTIFICATION.—After a management plan submitted under this section is approved by the State Governor (or the Administrator), a covered local educational agency shall implement the plan. Within 1 year after approval of its plan, each covered local educational agency—

"(1) shall implement the plan, and

"(2) shall certify to the State Governor (or the Administrator) that the plan has been implemented, by submitting a statement in writing detailing the implementation.

"(e) PUBLIC AVAILABILITY OF MANAGEMENT PLAN.—A copy of the management plan required under subsection (b) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents.

"(f) WARNING LABELS.—A covered local educational agency which has carried out its management plan activities with respect to a school building shall attach a warning label to any asbestos still in routine maintenance areas of the school building, such as boiler rooms, including—

"(1) asbestos which was abated by a means other than removal and is subject to long-term operation and maintenance activities, and

"(2) asbestos which was not abated because it was found not to be hazardous.

The warning label shall read, in print which is readily visible because of large size or bright color, as follows: '**CAUTION: ASBESTOS. CAUSES CANCER. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT**' (or words to that effect).

"SEC. 207. EPA RESPONSE AUTHORITY.

"(a) IN GENERAL.—Whenever—

"(1) the presence of asbestos in a school building may present an imminent and substantial endangerment to human health, and

"(2) the local educational agency is not taking sufficient action (as determined by the Administrator or Governor) to abate or arrange for the abatement of the asbestos,

the Administrator or the Governor of a State is authorized to act, consistent with standards prescribed under this title, to abate or arrange for the abatement of the hazard, or to take any other response measure which the Administrator or the Governor deems necessary to protect human health.

"(b) COST RECOVERY.—The Administrator may seek reimbursement from a local educational agency or any other potentially responsible party in a court of the United States for all costs of abatement action under this section incurred by the United States Government.

"SEC. 208. ABATEMENT ACTION.

"When the Administrator or the Governor of a State determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of asbestos in a school building, the Administrator may request the Attorney General of the United States, or the Governor may act, to secure such relief as may be necessary to abate such danger. The district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief, including injunctive relief, as the public interest and the equities of the case may require.

"SEC. 209. PUBLIC PROTECTION.

"(a) PUBLIC PROTECTION.—No State or local educational agency may discriminate against a person in any way, including firing a person who is an employee, because the person provided information relating to a potential violation of this title to any other person, including a State or to the Federal Government.

"(b) LABOR DEPARTMENT REVIEW.—Any public or private employee or representative of employees who believes he or she has been fired or otherwise discriminated against in violation of subsection (a) may within 90 days after the alleged violation occurs apply to the Secretary of Labor for a review of the firing or alleged discrimination. The review shall be conducted in accordance with section 11(c) of the Occupational Safety and Health Act.

"SEC. 210. POLLUTION INSURANCE.

"(a) DEFINITIONS.—As used in this section—

"(1) INSURANCE.—The term 'insurance' means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law.

"(2) POLLUTION LIABILITY.—The term 'pollution liability' means liability for injuries arising from the release of asbestos.

"(3) RISK RETENTION GROUP.—The term 'risk retention group' means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State—

"(A) whose primary activity consists of assuming and spreading all, or any portion, of the pollution liability of its group members;

"(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

"(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State; and

"(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person.

"(4) PURCHASING GROUP.—The term 'purchasing group' means any group of persons which has as one of its purposes the purchase of pollution liability insurance on a group basis.

"(b) STATE LAWS.—Nothing in this section shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State. The definitions of pollution liability and pollution liability insurance under any State law shall not be applied for the purposes of this section, including recognition or qualification of risk retention groups of purchasing groups.

"(c) RISK RETENTION GROUPS.—

"(1) EXEMPTION.—Except as provided in this subsection, a risk retention group shall be exempt from the following:

"(A) A State law, rule, or order which makes unlawful, or regulates, directly or indirectly, the operation of a risk retention group.

"(B) A State law, rule, or order which requires or permits a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong.

"(C) A State law, rule, or order which requires any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in the State.

"(D) A State law, rule, or order which otherwise discriminates against a risk retention group or any of its members.

"(2) EXCEPTIONS.—

"(A) STATE LAWS GENERALLY APPLICABLE.—Nothing in paragraph (1) shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

The State in which a risk retention group is chartered may regulate the formation and operation of the group.

"(B) STATE REGULATIONS NOT SUBJECT TO EXEMPTION.—Paragraph (1) shall not apply to any State law which requires a risk retention group to do any of the following:

"(i) Comply with the unfair claim settlement practices law of the State.

"(ii) Pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus line insurers, brokers, or policyholders under the laws of the State.

"(iii) Participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of pollution liability insurance losses and expenses incurred on policies written through such mechanism.

"(iv) Submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to pollution liability insurance losses and expenses.

"(v) Register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process.

"(vi) Furnish, upon request, such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction.

"(vii) Submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

"(I) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

"(II) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group.

"(viii) Comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under clause (vii).

"(3) APPLICATION OF EXEMPTIONS.—The exemptions specified in paragraph (1) apply to—

"(A) pollution liability insurance coverage provided by a risk retention group for—

"(i) such group; or

"(ii) any person who is a member of such group;

"(B) the sale of pollution liability insurance coverage for a risk retention group; and

"(C) the provision of insurance related services or management services for a risk retention group or any member of such a group.

"(4) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"(d) PURCHASING GROUPS.—

"(1) EXEMPTION.—Except as provided in this section, a purchasing group is exempt from the following:

"(A) A State law, rule, or order which prohibits the establishment of a purchasing group.

"(B) A State law, rule, or order which makes it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its member, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters.

"(C) A State law, rule, or order which prohibits a purchasing group or its members from purchasing insurance on the group described in subparagraph (B) of this paragraph.

"(D) A State law, rule, or order which prohibits a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time.

"(E) A State law, rule, or order which requires that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form.

"(F) A State law, rule, or order which requires that a certain percentage of a purchasing group must obtain insurance on a group basis.

"(G) A State law, rule, or order which requires that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State.

"(H) A State law, rule, or order which otherwise discriminates against a purchasing group or any of its members.

"(2) APPLICATION OF EXEMPTIONS.—The exemptions specified in paragraph (1) apply to the following:

"(A) Pollution liability insurance, and comprehensive general liability insurance which includes this coverage, provided to—

"(i) a purchasing group; or

"(ii) any person who is a member of a purchasing group.

"(B) The sale of any one of the following to a purchasing group or a member of the group:

"(i) Pollution liability insurance and comprehensive general liability coverage.

"(ii) Insurance related services.

"(iii) Management services.

"(3) AGENTS OR BROKERS.—A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

"(e) APPLICABILITY OF SECURITIES LAWS.—

"(1) OWNERSHIP INTERESTS.—The ownership interests of members of a risk retention group shall be considered to be—

"(A) exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

"(B) securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

"(2) INVESTMENT COMPANY ACT.—A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

"(3) BLUE SKY LAW.—The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

"SEC. 211. PREEMPTION.

"Nothing in this title shall be construed as preempting a State from establishing any additional liability or requirements with respect to asbestos in school buildings within such State.

"SEC. 212. DEFINITIONS.

"For purposes of this title—

"(1) the term 'Administrator' means the Administrator of the Environmental Protection Agency;

"(2) the term 'local educational agency' means—

"(A) any local educational agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381), and

"(B) the governing authority of any nonprofit elementary or secondary school;

"(3) the term 'covered local educational agency' means any local educational agency which has under its authority, after conducting certification under section 205—

"(A) any school in which there was no inspection for asbestos;

"(B) any school which conducted an inspection for asbestos, found asbestos, and did not abate the asbestos, or

"(C) any school which conducted an inspection for asbestos, found asbestos, and abated the asbestos by a method other than removal.

"(4) the term 'non-profit elementary or secondary school' means any elementary or secondary school (as defined in section 198 of the Elementary and Secondary Education Act of 1965) owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

"(5) the term 'public and commercial building' means any building which is not a school building and which is not residential property.

"(6) the term 'school building' means—

"(A) structures suitable for use as classrooms, including school facilities such as laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

"(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

"(C) other facilities used for the instruction of students or for the administration of educational or research programs; and

"(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A), (B), and (C);

"(7) the term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianas, the Trust Territory of the Pacific Islands, and the Virgin Islands.".

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENT TO ASBESTOS SCHOOL HAZARD ABATEMENT ACT.—Section 505(g) of the Asbestos School Hazard Abatement Act of 1984 is amended by adding at the end the following new paragraph:

"(4) No financial assistance may be provided under this section to any school which uses any person described in section 203(a)(1) (to carry out any activities described in such section) of the Toxic Substances Control Act who has not been accredited under a plan based on the model plan developed under section 203(a) of that Act. This paragraph shall apply to any financial assistance provided under this section more than 240 days after the date of the enactment of the Asbestos Hazard Emergency Response Act of 1986.".

(b) CONFORMING AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.—Section 15 of the Toxic Substances Control Act is amended in paragraph (1)—

(A) by striking out "or" before "(C)",

(B) by striking out the semicolon and inserting in lieu thereof a comma, and

(C) by adding at the end thereof the following "or (D) any rule promulgated or order issued under title II;".

(c) TECHNICAL AMENDMENTS.—The Toxic Substances Control Act is amended—

(1) by inserting immediately before section 1 the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES";

(2) by inserting in the table of contents in section 1, immediately before the item relating to section 1, the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES";

and

(3) by adding at the end of the table of contents in section 1 the following:

"TITLE II—ASBESTOS HAZARD EMERGENCY RESPONSE

"Sec. 201. Congressional findings and purpose.
"Sec. 202. Definition of asbestos; standards for asbestos identification and abatement; mandatory abatement of hazardous asbestos.
"Sec. 203. Model contractor accreditation plan.
"Sec. 204. State Governor asbestos review.
"Sec. 205. Certification of school inspection and abatement.
"Sec. 206. Inspection; asbestos management plans.
"Sec. 207. EPA response authority.
"Sec. 208. Abatement action.
"Sec. 209. Employee protection.
"Sec. 210. Pollution insurance.
"Sec. 211. Preemption.
"Sec. 212. Definitions.".

SEC. 4. AUTHORIZATION.

Section 512 of the Asbestos School Hazard Abatement Act of 1984 is amended by adding at the end the following: "In addition, for such purposes there are authorized to be appropriated out of the Asbestos Trust Fund established by section 5 of the Asbestos Hazard Emergency Response Act of 1986 $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.".

SEC. 5. ASBESTOS TRUST FUND.

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Asbestos Trust Fund", consisting of such amounts as may be transferred or credited to such Trust Fund as provided in this section.

(b) TRANSFERS TO TRUST FUND.—

(1) TRANSFER.—There are hereby transferred to the Asbestos Trust Fund amounts equivalent to amounts received in the Treasury on or after January

1, 1986, as repayments of loans made under section 505 of the Asbestos School Hazard Abatement Act of 1984 as in effect on the date of the enactment of this Act.

(2) MONTHLY TRANSFERS.—The amounts transferred by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Asbestos Trust Fund on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were more or less than the amounts required to be transferred.

(c) MANAGEMENT OF TRUST FUND.—

(1) INVESTMENT.—

(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Asbestos Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States and may be acquired—

(i) on original issue at the issue price, or

(ii) by purchase of outstanding obligations at the market price.

(B) SALE OF OBLIGATIONS.—Any obligation acquired by the Asbestos Trust Fund may be sold by the Secretary of the Treasury at the market price.

(C) INTEREST ON CERTAIN PROCEEDS.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Asbestos Trust Fund shall be credited to and form a part of the Trust Fund.

(2) REPORT.—It shall be the duty of the Secretary of the Treasury to hold the Asbestos Trust Fund and (after consultation with any other trustees of the Trust Fund) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next 5 fiscal years. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(d) EXPENDITURES FROM ASBESTOS TRUST FUND.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, only for purposes of carrying out the Asbestos Hazards Abatement Assistance Program under section 505 of the Asbestos School Hazard Abatement Act of 1984 as in effect on the date of the enactment of this Act.

(e) AUTHORITY TO BORROW.—

(1) IN GENERAL.—There are authorized to be appropriated to the Asbestos Trust Fund, as repayable advances, $25,000,000 for each of fiscal years 1987, 1988, 1989, and 1990.

(2) REPAYMENT OF ADVANCES.—

(A) IN GENERAL.—Advances made under this subsection shall be repaid, and interest on such advances shall be paid, to the general fund of the Treasury when the Secretary determines that moneys are available for such purposes in the Asbestos Trust Fund.

(B) RATE OF INTEREST.—Interest on advances made under this subsection shall be at a rate determined by the Secretary (as of the close of the calendar month preceding the month in which the advance is made) to be equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the anticipated period during which the advance will be outstanding and shall be compounded annually.

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1986.

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II

99TH CONGRESS
2D SESSION

S. 2300

To amend the Toxic Substances Control Act so as to require the Environmental Protection Agency to set standards for identification and abatement of hazardous asbestos in Federal and other buildings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 14 (legislative day, APRIL 8), 1986

Mr. STAFFORD (for himself, Mr. BAUCUS, Mr. MITCHELL, and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To amend the Toxic Substances Control Act so as to require the Environmental Protection Agency to set standards for identification and abatement of hazardous asbestos in Federal and other buildings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

The Toxic Substances Control Act is amended by adding at the end thereof the following:

"TITLE II—FEDERAL BUILDING ASBESTOS HAZARD ABATEMENT

"SEC. 201. SHORT TITLE.

"This title may be cited as the "Federal Building Asbestos Hazard Abatement Act of 1986".

"SEC. 202. CONGRESSIONAL FINDINGS AND PURPOSES.

"(a) FINDINGS.—

"(1) The Congress finds that—

"(A) hazardous asbestos is present in many Federal buildings and other buildings that are accessible to the public;

"(B) asbestos, if unrecognized or poorly managed, can cause serious adverse health effects, including lung cancer and other deadly and debilitating diseases;

"(C) though the Federal Government requires that school buildings be inspected for hazardous asbestos, there is no such requirement affecting buildings that are owned or leased by the Federal Government, or other publicly accessible buildings, nor is there any requirement that hazardous asbestos be abated in a safe and complete manner once it is discovered;

"(D) many buildings have not been inspected for hazardous asbestos, while others have been subjected to expensive abatement projects with no regulatory guidance from the Environmental Protection Agency on whether the actions are necessary, adequate, or safe; and

"(E) serious asbestos hazards continue to exist in certain buildings and some hazards actually may have been made worse due to the lack of national standards for asbestos hazards and abatement.

"(b) PURPOSES.—The purposes of this title are to—

"(1) provide for the establishment of Federal standards for the identification and abatement of hazardous asbestos in Federal and other buildings; and

"(2) mandate safe and complete inspection and abatement in accordance with those standards.

"SEC. 203. DEFINITIONS.

"For purposes of this title, the term—

"(1) 'Administrator' means the Administrator of the Environmental Protection Agency;

"(2) 'Federal building' means any building which is owned by the Federal Government;

"(3) 'covered Federal building' means any Federal building included on the schedule established by the Administrator pursuant to section 206(b) of this title;

"(4) 'non-Federal building' means any building other than a Federal building, except that such term does not include any school building otherwise subject to an asbestos inspection and abatement program under Federal law, any private residential dwelling, or any commercial residential building having fewer than 10 residential units;

"(5) 'covered non-Federal building' means any non-Federal building which is included on the schedule established by the Administrator pursuant to section 206(b) of this title;

"(6) 'accredited asbestos contractor' means an individual who has successfully completed an Environmental Protection Agency approved training program, or a training program relating to asbestos inspections and abatement adopted pursuant to subsection (b) of section 205 of this title;

"(7) 'owner', when used in connection with a covered Federal building under this title, means the head of the department, agency, office, or other instrumentality of the United States having jurisdiction or control over such building;

"(8) 'asbestos' means friable asbestos, material which contains friable asbestos, and any covering of friable asbestos or material which contains friable asbestos;

"(9) 'friable asbestos' means chrysotile, amosite, or crocidolite, or, in fibrous form, tremolite, anthophyllite, or actinolite, which can be crumbled, pulverized, or reduced to powder by hand pressure;

"(10) 'abatement' means action taken to eliminate the hazards posed by asbestos, including enclosure, encapsulation, repair, or removal; and

"(11) 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

"SEC. 204. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON IDENTIFICATION AND ABATEMENT OF ASBESTOS.

"(a) STANDARDS.—Within 180 days after the date of the enactment of this title, the Administrator shall promulgate the following:

"(1) Regulations which prescribe standards and procedures, including the use of trained personnel, for determining whether asbestos is present in buildings.

"(2) Regulations which prescribe standards for the circumstances in which the presence of asbestos in a building shall be considered hazardous. In any standard prescribed under this paragraph, asbestos shall be considered hazardous if the asbestos or its covering is—

"(A) visibly damaged, or

"(B) readily accessible in a manner which presents a reasonable likelihood of human exposure to airborne asbestos fibers.

"(3) Regulations which mandate abatement, in accordance with standards prescribed under paragraph (4) of this subsection, of hazardous asbestos found in any building included on the schedule established pursuant to section 206 of this title, as determined in accordance with standards prescribed under paragraphs (1) and (2) of this subsection.

"(4) Regulations which prescribe standards for performance of asbestos abatement activities in buildings and for determination of when the hazard has been abated. Such regulations shall include standards for protection for both workers and building occupants for the following phases of abatement activity:

"(A) Inspection.

"(B) Abatement.

"(C) Post-abatement, including any long-term operation and maintenance activity.

"(5) Regulations which prescribe standards for operation and maintenance plans for—

"(A) hazardous asbestos which is abated by a means other than removal, and

"(B) asbestos which is found not to be hazardous.

The regulations shall include provisions for the education and protection of workers and other persons who may come in contact with the asbestos, for periodic reinspection of the asbestos, and for procedures to be used for custodial activities, building management, repairs, and renovations.

"(6) Regulations which prescribe such standards for transportation and disposal of asbestos as may be necessary to protect human health and the environment.

"(b) HAZARDOUS ASBESTOS STANDARD IF ENVIRONMENTAL PROTECTION AGENCY FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under paragraphs (1) and (2) of subsection (a) of this section within the prescribed period, any asbestos or its covering which exists in a building included on the schedule established pursuant to section 206 of this title shall be considered hazardous if the asbestos is visibly damaged, with portions of the material dislodged, missing, cracked, deteriorated, showing evidence of water damage, or flaking, in any area in the building where there is a potential for human exposure, including an air plenum. Such standards shall be effective until such time as the Administrator promulgates different standards under regulations under paragraphs (1) and (2) of subsection (a) of this section.

"(c) ABATEMENT IF ENVIRONMENTAL PROTECTION AGENCY FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under paragraphs (3) and (4) of subsection (a) of this section within the prescribed period, and if any asbestos which is hazardous under the standard described in subsection (b) of this section exists in a building included on the schedule established pursuant to section 206 of this title, the owner of such building shall abate such asbestos in accordance with the most recent version of the Environmental Protection Agency's 'Guidance for Controlling Asbestos-Containing Materials in Buildings' (or any successor to such document). The ambient interior concentration of asbestos after the completion of abatement shall not exceed the ambient exterior concentration, discounting any contribution from any local stationary source. In the absence of reliable measurements, the exterior ambient concentration shall be deemed to be less than 0.003 fibers per cubic centimeter. A scanning electron microscope shall be used to determine whether the standard has been met.

"(d) TRANSPORTATION AND DISPOSAL STANDARDS IF ENVIRONMENTAL PROTECTION AGENCY FAILS TO PROMULGATE REGULATIONS.—If the Administrator fails to promulgate regulations under subsection (a)(6) of this section within the prescribed period, any asbestos which is abated within a building included on the schedule established pursuant to section 206 of this title shall be transported and disposed of in accordance with the most recent version of the Environmental Protection Agency's "Asbestos Waste Management Guidance" (or any successor to such document).

"SEC. 205. MODEL CONTRACTOR ACCREDITATION PLAN.

"(a) MODEL PLAN.—

"(1) PERSONS TO BE ACCREDITED.—Within 180 days after the date of the enactment of this title, the Administrator shall develop a model accreditation plan for States to give accreditation to persons for performance of the following functions:

"(A) inspection for asbestos in buildings;

"(B) preparation of asbestos management plans for such buildings;

"(C) abatement of asbestos in such buildings; and

"(D) laboratory analysis of bulk samples and air samples of asbestos from such buildings in laboratories.

"(2) PLAN REQUIREMENTS.—The plan shall include a requirement that any person performing a function listed in the preceding sentence achieve a passing grade on an examination pertaining to that function and participate in continuing education on current asbestos abatement technology. The examination shall assess the knowledge of the person in areas that the Administrator prescribes in regulations as necessary and appropriate for the performance of the functions listed in paragraph (1). Such regulations may include requirements for knowledge in the following areas:

"(A) recognition of asbestos and its physical characteristics;

"(B) health hazards of asbestos and the relationship between asbestos exposure and disease;

"(C) assessing the risk of asbestos exposure through a knowledge of percentage weight of asbestos, friability, age, deterioration, location and accessibility of materials, and advantages and disadvantages of dry and wet methods of abatement;

"(D) respirators and their use, care, selection, degree of protection afforded, fitting, testing, and maintenance and cleaning procedures;

"(E) appropriate work practices and control methods including the use of high efficiency particle absolute vacuums, use of amended water, and principles of negative air pressure equipment use and procedures;

"(F) work area preparation for asbestos abatement, including isolation procedures to prevent bystander or public exposure, decontamination procedures, procedures for post-abatement dismantling of work areas, and waste disposal procedures;

"(G) establishing emergency procedures to respond to sudden releases;

"(H) air monitoring requirements and procedures;

"(I) medical surveillance program requirements; and

"(J) housekeeping and personal hygiene practices and procedures to prevent asbestos exposure to an employee's family.

"(b) STATE ADOPTION OF PLAN.—Within 180 days after the Administrator has developed a model contractor accreditation plan under subsection (a) of this section, each State shall—

"(1) adopt a contractor accreditation plan at least as stringent as that model, or

"(2) require that anyone practicing as a contractor in the State be accredited by another State which has adopted a contractor accreditation plan at least as stringent as the model plan.

"SEC. 206. CERTAIN BUILDINGS SUBJECT TO TITLE.

"(a) COVERED BUILDINGS.—After the date of the enactment of this title, all covered Federal buildings and covered non-Federal buildings shall be required to be inspected for the purpose of determining the presence of asbestos material. Such inspection, together with action necessary to abate any hazardous asbestos found as a result of such inspection, shall be carried out in accordance with the provisions of this title.

"(b) SCHEDULE FOR ASBESTOS INSPECTION AND MANAGEMENT.—

"(1) PUBLICATION OF SCHEDULE.—Within the 12-month period following the date of the enactment of this title, the Administrator shall develop and publish in the Federal Register a schedule identifying and designating, by category, type, or class, the order in which Federal buildings shall be inspected for the presence of asbestos material and, if such material is found, a management plan developed and implemented in accordance with section 208 of this title. Except to the extent otherwise specifically provided herein, the development and publication of such schedule, including revisions and additions under paragraph (2) of this subsection, shall be within the discretion of the Administrator.

"(2) REVISIONS; ADDITIONS.—The Administrator shall, from time to time (but not less than biannually), review the schedule established pursuant to paragraph (1) of this subsection with a view to expediting, to the extent consistent with the availability of technical experts and personnel, and analytical resources, the inclusion on such schedule of additional categories, types, or classes of Federal buildings and non-Federal buildings. Any such additions shall be published in the Federal Register.

"(3) MATTERS TO BE CONSIDERED IN DEVELOPING SCHEDULE.—In making the determination of any such category, type, or class of building for inclusion on such schedule, or revisions and additions thereto, the Administrator shall consider, among other items or matters—

"(A) the size of a building;

"(B) date of construction or renovation;

"(C) likelihood that building contains asbestos material;

"(D) availability of technical experts and personnel and analytical resources;

"(E) whether the determination is likely to adversely affect or impede the inspection for, or abatement of, hazardous asbestos in school buildings;

"(F) number of occupants and visitors utilizing such building; and

"(G) likelihood of use by children.

"SEC. 207. INSPECTION OF COVERED BUILDING.

"(a) INSPECTION REQUIREMENT.—Within 180 days after the Administrator has published his initial schedule in the Federal Register pursuant to section 206 of this title, or a revision or addition thereto, designating a particular category, type, or class of building as a part of such schedule, the owner of any such building shall conduct an inspection thereof to determine the presence or absence of asbestos materials in such building. Each owner, following such inspection, shall prepare a statement containing the following information for each such building so owned:

"(1) the dates of inspection;

"(2) the name, address, and qualifications of each inspector;

"(3) a description of the specific areas inspected, including an indication of whether the boiler room was inspected;

"(4) the results of such inspection; and

"(5) a description of any abatement action previously taken.

"(b) PUBLIC AVAILABILITY OF INSPECTION STATEMENT.—A notice of the availability of the inspection statement required under subsection (a) of this section shall be posted and shall remain posted in a conspicuous place on or within the building covered by such statement. A copy of such inspection statement shall be made available, upon request by any person, by the owner of the building covered by such plan.

"(c) AVAILABILITY OF INSPECTION STATEMENT.—A copy of each inspection statement made pursuant to subsection (a) of this section shall, within sixty days following its preparation, be submitted to the Administrator. Upon request of any Governor of a State to the Administrator for copies of such inspection statements, the Administrator shall make copies available pursuant to such request.

"SEC. 208. ASBESTOS MANAGEMENT PLANS.

"(a) MANAGEMENT PLAN.—Each owner of a building designated on the schedule established pursuant to section 206 of this title who, following an inspection pursuant to section 207 of this title, determines the presence of asbestos material or materials in such building, shall, not more than 60 days following such inspection, prepare a management plan for dealing with such asbestos. Each plan shall provide for compliance with the applicable regulations prescribed by the Administrator under section 204 of this title (or if there are no regulations, the applicable standards in subsections (a) and (b) of section 204 of this title) and shall include the following:

"(1) schedules for followup inspections for asbestos;

"(2) a detailed description of measures to be taken to abate any asbestos which is found to be hazardous, including the location or locations at which an abatement action will be taken and the method or methods of abatement to be used;

"(3)(A) a detailed description of criteria and procedures which have been or which will be followed in selecting persons to abate the asbestos found to be hazardous; or

"(B) if the State has adopted a contractor accreditation plan similar to the model contractor accreditation plan developed under section 205 of this title, a statement that the owner of the building followed that plan in selecting such persons;

"(4) the names of the consultants, if any, who contributed to the plan, along with a description of their credentials;

"(5) a detailed description of any asbestos found in such building which was found not to be hazardous under the regulations prescribed under subsection (a) of section 204 of this title (or the standard in subsection (b) of section 204 of this title) and which is not visibly damaged or flaking; and

"(6) an operation and maintenance plan, with a provision requiring periodic reinspection, for—

"(A) asbestos which was abated by encapsulation rather than by removal, and

"(B) asbestos which was not abated because it was found not to be hazardous.

"(b) Management Plan Accreditation.—Each such management plan shall contain a statement by an accredited asbestos contractor that such contractor has prepared or assisted in the preparation of such plan, or has reviewed such plan, and that such plan is in compliance with the applicable regulations and standards promulgated or adopted pursuant to section 204 of this title, and other applicable provisions of law.

"(c) Implementation of Asbestos Abatement Management Plans.—After an asbestos management plan has been developed in accordance with this section, the owner of the building covered by such plan shall implement the plan within 12 months.

"(d) PUBLIC AVAILABILITY OF ASBESTOS MANAGEMENT PLAN.—Notice of the availability of the asbestos management plan required under subsection (a) of this section shall be posted and shall remain posted in a conspicuous place on or within the building covered by such plan. A copy of such plan shall be made available, upon request by any person, by the owner of the building covered by such plan.

"(e) WARNING LABELS.—Any owner of a building who has carried out his or her management plan activities with respect to such building shall display warning labels at appropriate locations in such building, to notify building users of—

"(1) asbestos which was abated by encapsulation rather than removal and is subject to operation and maintenance activities, and

"(2) asbestos which was not abated because it was not found to be hazardous.

The warning label shall read, in print which is readily visible because of large size or bright color, as follows: **'CAUTION: ASBESTOS PRESENT. ASBESTOS CAUSES CANCER. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT'**.

"SEC. 209. FEDERAL LEASING POLICIES.

"On and after the expiration of the thirty-six-month period following the date of the enactment of this title, no department, agency, or other entity or instrumentality of the United States shall enter into any purchase agreement or lease for the acquisition of real property for use by any department, agency, or other entity or instrumentality of the United States, unless such property has been inspected in accordance with the provisions of this title and found to be free of any asbestos material, or such property has been inspected and is, at the time of any such purchase or lease, subject to a valid and current asbestos abatement management plan that is in compliance with the provisions of this title and regulations and standards promulgated pursuant thereto.

"SEC. 210. ENVIRONMENTAL PROTECTION AGENCY RESPONSE AUTHORITY.

"(a) IN GENERAL.—Whenever—

"(1) the presence of asbestos in a building designated on the schedule, or revision thereof, of the Administrator pursuant to section 206 of this title may present an imminent and substantial endangerment to human health, and

"(2) the owner of such building is not taking sufficient action (as determined, in the case of a covered Federal building, by the Administrator or, in the case of a covered non-Federal building, by the Governor or the Administrator) to abate or arrange for the abatement of the asbestos,

the Administrator, in the case of a covered Federal building, or the Governor or the Administrator, in the case of a covered non-Federal building, is authorized to act, consistent with standards prescribed under this title, to abate or arrange for the abatement of the hazard, or to take any other response measure which the Administrator or the Governor deems necessary to protect human health.

"(b) COST RECOVERY.—The Administrator may seek reimbursement from any potentially responsible party in a court of the United States for all costs of abatement action under this section incurred by the United States Government.

"SEC. 211. ABATEMENT ACTION.

"When the Administrator, in the case of a covered Federal building, or the Governor of a State, in the case of a covered non-Federal building, determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the presence of asbestos in any such building, the Administrator may request the Attorney General of the United States, or the Governor may act, to secure such relief as may be necessary to abate such danger, including closure of the buildings. The district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief, including injunctive relief, as the public interest and the equities of the case may require.

"SEC. 212. PREEMPTION.

"Nothing in this title shall be construed as preempting a State from establishing any additional liability or requirements with respect to asbestos in non-Federal buildings within such State.

"SEC. 213. REPORT.

"The Administrator shall include, as a part of the annual report required by section 30 of the Toxic Substances Control Act, a report containing the following:

"(1) a summary of the information and other data (including inspection statements) available to the Administrator showing the extent to which asbestos was found in buildings covered by this title during the period covered by such annual report required by the Toxic Substances Control Act;

"(2) a summary of the abatement actions taken by owners of buildings covered by this title during the period covered by such annual report; and

"(3) a description of actions taken by the Administrator in the administration of this title during the period covered by such annual report, including enforcement action.".

SEC. 2. CONFORMING AMENDMENT TO TOXIC SUBSTANCES CONTROL ACT.

(a) CONFORMING AMENDMENT.—Section 15 of the Toxic Substances Control Act is amended in paragraph (1)—

(1) by striking out "or" before "(C)";

(2) by striking out the semicolon and inserting in lieu thereof a comma; and

(3) by adding at the end thereof the following: "or (D) any rule promulgated or order issued under title II;".

(b) TECHNICAL AMENDMENTS.—The Toxic Substances Control Act is amended—

(1) by inserting immediately before section 1 the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES";

(2) by inserting in the table of contents in section 1, immediately before the item relating to section 1, the following:

"TITLE I—CONTROL OF TOXIC SUBSTANCES"; and

(3) by adding at the end of the table of contents in section 1 the following:

"TITLE II—FEDERAL BUILDING ASBESTOS HAZARD ABATEMENT

"Sec. 201. Short title.
"Sec. 202. Congressional findings and purposes.
"Sec. 203. Definitions.
"Sec. 204. Environmental Protection Agency regulations on identification and abatement of asbestos.

"Sec. 205. Model contractor accreditation plan.
"Sec. 206. Certain buildings subject to title.
"Sec. 207. Inspection of covered building.
"Sec. 208. Asbestos management plans.
"Sec. 209. Federal leasing policies.
"Sec. 210. Environmental Protection Agency response authority.
"Sec. 211. Abatement action.
"Sec. 212. Report.".

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PESTICIDES AND TOXIC SUBSTANCES

JUN 30 1986

Honorable David Durenberger
Chairman
Subcommittee on Toxic Substances
and Environmental Oversight
Committee on Environment and
Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you requested at the hearing on May 15, 1985, we have extracted information from our files on the extent of Canada's asbestos trade with the United States.

Enclosed is the additional information we promised in our previous response concerning more recent import and export data.

Sincerely yours,

John A. Moore
Assistant Administrator
for Pesticides
and Toxic Substances

Enclosures

U.S. IMPORTS OF ASBESTOS PRODUCTS FROM CANADA
(1984-85)

TSUSA Number	Commodity Description	1984		1985	
		Quantity	Value ('000 $)	Quantity	Value ('000 $)
518.1110	Asbestos, Amosite	0	0	0	0
518.1120	Asbestos Crocidolite Blue	0	0	0	0
518.1130	Asbestos Chrysotile Crudes	94 STN	92	104 STN	86
518.1140	Asbestos Chrysotile Spinning Fibers	2,249 STN	1,369	2,193 STN	1,454
518.1150	Asbestos Chrysotile Except Crudes and Spinning Fibers	210,710 STN	53,751	139,809 STN	35,962
518.1160	Asbestos Unmanufactured Crudes, Fibers, Stucco, etc., Not Specified	2,615 STN	1,055	1,904 STN	962
518.2100	Asbestos Yarn, Slivers etc. With or Without Wire and Articles	426,609 lbs.	1,147	381,728 lbs.	937
518.4100	Pipes, Tubes, and Fittings of Asbestos and Hydraulic Cement	3,774,969 lbs.	787	1,948,134 lbs.	674
518.4400	Asbestos and Hydraulic Cement Articles Not Specified	16,913,596 lbs.	3,808	16,980,338 lbs.	5,150
518.5100	Asbestos Articles Not Specified	Not Applicable	1,883	Not Applicable	1,547

U.S. EXPORTS OF ASBESTOS PRODUCTS TO CANADA
(1984-85)

Schedule E Number	Commodity Description	1984		1985	
		Quantity	Value ('000 $)	Quantity	Value ('000 $)
278.4020	Asbestos Not Manufactured; Crudes, Fibers, and Stucco	2,227 STN	880	1,678 STN	641
278.4040	Asbestos Sand and Refuse	0	0	283 STN	73
661.8322	Asbestos Cement Shingles and Clayboard	359,117 lbs.	105	314,188 lbs.	70
661.8340	Asbestos and Hydraulic Cement Articles Not Specified	889,097 lbs.	606	675,902 lbs.	743
663.8010	Asbestos Yarn, silvers etc. With or Without Wire and Articles Thereof	93,190 lbs.	599	76,840 lbs.	738
663.8022	Asbestos Gaskets	236,060 lbs.	355	13,901 lbs.	83
663.8030	Asbestos Packings and Seals	991,018 lbs.	2,053	639,516 lbs.	1,130
663.8040	Asbestos Insulation	Not Specified	2,571	Not Specified	1,507
663.8055	Brake Linings and Discs; Asbestos Brake Pads for Motor Vehicles	Not Specified	94,542	Not Specified	134,588
663.8065	Asbestos Clutch Facings and Linings for Motor Vehicle	Not Specified	5,831	Not Specified	4,635
663.8075	Asbestos Articles Not Specified	Not Specified	5,350	Not Specified	5,170